



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

*Compliments of  
Chas F Cutler Reed*

# In Chancery of New Jersey

BETWEEN  
THE DOMESTIC TELEGRAPH AND  
TELEPHONE COMPANY,  
OF NEWARK, - - NEW JERSEY,  
COMPLAINANT,

AND  
THE METROPOLITAN TELEPHONE  
AND TELEGRAPH COMPANY,  
AND THE  
NEW YORK AND NEW JERSEY  
TELEPHONE COMPANY,  
DEFENDANTS.

ON BILL, &c.



## ARGUMENT OF JAMES McC. MORROW.

HON. THOMAS N. McCARTER,  
HENRY YOUNG, Esq.,

*For Complainant.*

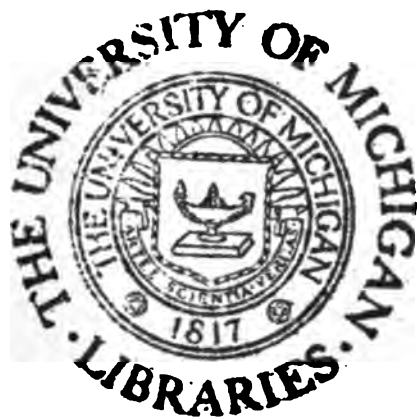
HON. JOSEPH D. BEDLE,  
JAMES McC. MORROW, Esq.,

*For Defendants.*

SPRINGFIELD, MASS.:

PRESS OF SPRINGFIELD PRINTING COMPANY.

1886.







SA  
FILE  
Transd  
8-20-83

## In Chancery of New Jersey.

BETWEEN  
THE DOMESTIC TELEGRAPH & TELEPHONE COM-  
PANY OF NEWARK, NEW JERSEY,  
*Complainant,*  
AND  
THE METROPOLITAN TELEPHONE AND TELE-  
GRAPH COMPANY AND THE NEW YORK &  
NEW JERSEY TELEPHONE COMPANY,  
*Defendants.*

*On Bill, &c.*

Argument of JAMES MCC. MORROW, Counsel for Defendants,  
before HON. JOHN T. BIRD, Vice Chancellor, on Dec. 21 and 22,  
1885, and January 8, 1886.

It has been said that "our profession leads us to explore the  
"mazes of falsehood; to detect its artifices; to pierce its thickest  
"veils; to follow and expose its sophistries; to compare the  
"statements of different witnesses with severity; to discover  
"truth and separate it from error."

And if my effort shall accomplish any of these purposes, and  
aid the Court to a proper understanding of the issues involved,  
it will not have been made in vain.

And I shall ask the indulgence of the Court only so long as  
may be necessary to a proper discussion of the facts in this con-  
troversy.

The issues of this case are few, but their solution is of vast  
importance not only to the litigants represented here, but also  
to the business interests of this community.

They involve not only the right *exclusively* to use the tele-  
phone in this district of Newark, Harrison, and Kearney, with  
all the profit and emolument attending such exclusiveness, but  
they involve likewise the question whether this necessity to  
every business man's operations shall be freed from, or ham-  
pered by, the annoyances which must inevitably result from in-  
tercommunication attempted to be conducted between this

HE

8841

N494

DBG

M68

1886

territory and the city of New York and surrounding country, by antagonistic companies.

Railroads may build their rival lines and the public is sure to derive a benefit. Stage and express lines, the telegraph, the competing boats and steamers—in fact, any rivalry between corporations free to act anywhere and everywhere and independently of each other, brings relief to manufacturing, mercantile, or business life.

But the time has not yet arrived for rivalry in telephone lines. Whatever we may think of the monopoly, we must recognize the fact that the business man who must have this assistance in the transaction of his business, or get left, is bereft of his usual option of "looking around" to see where he can do the best; but he is compelled to use the Bell Telephone, or do as well as he can without any.

And your Honor will see how important it is, living as we do in such close proximity with the metropolis of the land, our manufactories here and our salesrooms in New York, that this means of communication should reach its most perfect possibilities, and be relieved of the embarrassments and failures which must of necessity spring from any attempt to carry on the business through a company at one place having no sympathy with, but on the contrary, an antagonism towards, that in the other.

The telephone first began to attract the attention of the business world in 1878 or 1879. Its theory, of course, was known prior to that time, but it was but a toy, awaiting development and perfection. Several patents had been issued, the Edison, the Gray, the Phelps, the Bell, and others not necessary to mention.

Organizations and companies had been formed, and these various instruments had been introduced, or were seeking introduction everywhere. Rivalry was promised, and all appearances indicated the benefit to the commercial world which had sprung from the inventions of the telegraph, the railroad, the express, and the steamer.

The Western Union Telegraph Company, that alert and powerful corporation which needs no introduction anywhere, was quick to foresee the advantages of this new invention, the practical operation of which would be conducted similarly to, and be closely allied with, its own business.

It secured control of the Edison and Gray patents and established its exchanges everywhere. It was early in the field in the city of Newark.

Mr. Hubbell, the president of the Domestic Company, and the principal witness for the complainants in this suit, says (p. 132, l. 16): "On August 6, 1879, they had established themselves here, and had 250 subscribers secured and 150 telephones in operation. Their lines were run upon the various lines which the Western Union owned in this city and on the lines of other companies which they assumed control of, and that, together with house fixtures here and there, made it comparatively easy for them to establish their lines, which they did *with amazing rapidity and success.*"

Could language more graphically describe the ease with which this powerful corporation, with lines already constructed, and with means without stint at its disposal, pushed itself to the front in the telephone business here and everywhere?

What was the position of the complainant's company at that time?

They were incorporated November 20, 1875, with a capital of \$10,000, as the Domestic Telegraph Company. Under their primary organization, they conducted (p. 124) what is termed a Signal Alarm business. It consisted of calling for messengers to do errands of various kinds around the city—calls for policemen, fire department, the doctor, or any other call which might be understood by a preconcerted code.

Mr. Hubbell says it was a profitable business. Undoubtedly it was, and undoubtedly it would have continued profitable if something better had not arrested the public gaze. The stage business was a profitable business until the dawn of the railroad; but the stage business and the signal alarm business dropped naturally into their graves when the railroad and the telephone were born.

How ready was the Domestic Company to recognize the changed condition of things. Mr. Hubbell says (p. 127) their attention was called in 1879 to this telephone business because their signal alarm business could be much better and more efficiently conducted by the telephone.

They "were depending on preconcerted signals" (p. 127, l. 23)—which signals must, of course, be limited ("they had only six," p. 204, l. 20) and unsatisfactory in a great measure; whereas, "the telephone would permit a person to talk to their central office" (p. 127, l. 25), and he might have added to any person connected with their central office, or the central office of any neighboring exchange, practically "face to face as a man speaks to his friend."

This company took prompt action. In September, 1879, they



changed their name to the "Domestic Telegraph and Telephone Company" (p. 125, l. 14), being determined to have the name and form as well as the substance; and, on July 31, 1880, "they filed articles by which they had an authorized capital of "\$100,000" (p. 126, l. 5) instead of \$10,000, as at the beginning of their existence, which capital, Mr. Hubbell says (p. 126, l. 7), "was full paid up in cash"; but one-half of which appears to have been paid up by a stock dividend, declared May 22, 1882. Possibly this is a distinction without much difference.

It is no criticism against them that they made money; but for some mysterious reason they did not want to admit it.

Now to retrace a step or two.

The Domestic Company seeing that their signal alarm had seen its day, and viewing with "*signal alarm*" "the amazing rapidity and success" with which the Western Union was preparing to bury them out of sight with the telephone—for Mr. Hubbell says (p. 204, l. 17): "The fact of introducing telephones here in Newark was to substitute a complete means of communication between houses or customers and the telephone exchange in place of our boxes, which only allowed six signals"—they put their heads together, consulted John D. Harrison (p. 129, l. 14), looked over the field, and concluded that inasmuch as the breeching was about to break, something had got to be done; and by some favor of the gods, determined that the Bell telephone gave them the brightest promise of successful competition with the Western Union.

They ascertained (p. 127, l. 34) that the Bell Telephone Company of New York had a license from the Bell of Boston, then the parent company, for the exclusive use of the Bell telephone in New York city and thirty-three miles of the surrounding territory, including Newark, Harrison, and Kearney, and on August 5, 1879, the Domestic Company resolved that (p. 128, l. 27):

"George W. Hubbell and F. T. Fearey are authorized to arrange with the Bell Telephone Company of New York for the use of their latest improved instruments for the term of five years, with the privilege of renewal, and also to arrange about the necessary switches and indicators."

On the next day, August 6, 1879 (p. 128, l. 32), Messrs. Hubbell and Fearey met the representatives of the Bell Telephone Company of New York in New York city.

This, however, was not the famous Gilsey House interview.

It will be perceived that by the action of the Domestic Company, constituting them a committee, Messrs. Hubbell and Fearey *were distinctly authorized to make a contract.*

In what plight was the committee of the Bell Company in that respect on that day?

The Board of Trustees of that company also held a meeting on August 5, 1879, and resolved (p. 702, l. 2):

“That Mr. Harrison be authorized to notify the Domestic Telegraph Company of Newark that the Bell Telephone Company of New York will enter into an arrangement with it for a limited term of years to operate a distinct telephone system in Newark, by paying not less than the gross rental of telephones, such right to be confined to the limits of the cities of Newark and East Newark; the Bell Telephone of New York reserving the exclusive right of establishing communication between such exchange and the outside territory, and also having the option of purchasing all the plant in these for exchange purposes at the termination of the contract.”

So it would seem that by comparison of the action of the two companies, that that of the Domestic was a result of that taken by the Bell.

Particular mention is made of these actions to impress upon the Court the *care and caution* with which *both* these companies proceeded, so that nothing should be done *under cover of doubtful authority*.

The next day, August 6, 1879, the Directors or Trustees of the Bell Telephone Company met again on this business and resolved (p. 103, l. 10):

“On motion duly seconded, the President was authorized to sign a memorandum basis of contract with the Domestic Telegraph Company of Newark, and the drawing of a formal contract referred to the Executive Committee. The above motion unanimously adopted.”

Did this leave anything in doubt? Could there be any question as to the authority of these Committees? And I repeat with what *care and caution both these companies proceeded*, so that nothing should be done under a doubtful authority.

Now these Committees met. They indulged in a long discussion, and, as a result of it all, they brought forth the preliminary contract of August 6, 1879, found on page 44.

And just here I desire to call the attention of the Court to the strenuous manner in which Mr. Young warned the Court against relying upon Mr. Theo. N. Vail's testimony in this case, not because Mr. Young had found any *untruth* in Mr. Vail's testimony, but because, as he alleges, that Mr. Vail disregarded the preferential clause contained in the protocol; and in the same breath with which he criticised Mr. Vail he apologized for

Mr. Hubbell's loose statements respecting the execution and handwriting of this protocol, but declared that it was of very little importance.

Let us see if it was of very little importance.

Standing by itself, perhaps it was of little importance.

When Mr. Hubbell gave his direct testimony, he said positively, and without possibility of mistake, that his copy was in Vail's handwriting, and he gave the whole circumstances (p. 130, l. 5) of Vail's writing it in his presence, "and under his eye"—and he said all this advisedly; and he maintained his positiveness until on the cross-examination he was about to be confronted with the copy written by Vail, when he hedged out of it, in the way shown by the cross-examination read by Mr. Young.

I say, standing alone it would not amount to much, but it is a most perfect index of the general looseness of Mr. Hubbell's statements.

Whose testimony shall we scan so narrowly in this case?

And whose loose swearing—as Mr. Young terms it—shall we remember?

Shall we condemn the man, who, in Mr. Young's opinion merely, disregarded the preferential clause, as the courts have said he might? Or shall we look with some suspicion upon the testimony of the man who swears to one thing one day, and another thing the next?

They apparently have got to learn that the streets of Jerusalem were kept clean by each man keeping his own door-stone clean, and there is an immense pile of rubbish before this Domestic door.

It will be noticed that this protocol gave the exclusive right to use Bell Telephone *only* (no other), in Newark, Harrison, and Kearney, for exchange and private line purpose.

The rentals were fixed—iron-clad—at \$10, though Mr. Young tells us in his argument that at that time they could be had for the asking, and, practically, that you could buy them up cheap at any corner grocery—but our Domestic friends evidently didn't know that, or they wouldn't have agreed to pay \$10 rental for them—and nobody else knew it, because it wasn't true, and so the rentals were fixed at \$10—iron-clad, without a suggestion of a possibility of reduction; the Domestic Company to use none but Bell telephones, and the Bell Company reserved the exclusive right of connecting the Newark exchange with other exchanges. The agreement to continue five years, and

the Domestic Company to have first preference in making any contract at the termination of the agreement.

Mr. Young says if the business proved *profitable* they wanted a renewal. But didn't they want a renewal if it *didn't* prove profitable? Oh, no! They were very fair, but they wanted a bargain like the handle of the jug, and the courts have said that bargains which allow one party to put the handle on whichever side of the jug suits the fancy, are not good for much.

The Domestic Company to prosecute the business diligently under penalty of forfeiture, and to deliver to the Bell Company messages for hire for points outside. And a final declaration that "This is the memorandum of a contract which we hereby agree "to execute as soon as drawn."

Mr. Young says that Mr. Vail's statement (p. 524, l. 15) that these words "were written at the time" the preliminary was drawn is probably incorrect, but Mr. Vail was not contradicted and there is no word of testimony upon which Mr. Young based his *probability*.

Some time later, the full contract between these companies, bearing the same date, August 6, 1879, was prepared and executed under the seals of the two companies by their proper officers. It embraces the provisions of the preliminary contract, amplified with all the "ponderosity of particularity." It omitted the private line grant to the Domestic Company, whether by accident or design has been much controverted in this case.

Mr. Hubbell says he didn't notice the omission when it came to them for signature, and as will be seen further on, it was of very little, if any, consequence to them. But it was omitted, both parties signed and accepted it, and that was the end of it.

The terms of this amplified contract merit discussion, particularly and at length.

It will be noted:

1st. That the iron-clad terms of rental of instruments at \$10 per annum during the continuance of the contract were preserved without even a hint or thought of any reduction under any circumstances (p. 47, l. 1).

2d. That by the 9th clause, the contract was to terminate on the last day of August, 1884 (p. 49, l. 16).

3d. That by the 10th clause, it was made optional to, *but not obligatory upon*, the Bell Company, its successors and assigns, to purchase the Domestic Company's plant at the termination of the contract, at a price to be agreed upon or fixed by arbitration, but such purchase to have no regard to valuation for good will (p. 49, l. 24).

4th. That by section 11 (and this seems to be the critical clause of the contract) it is provided that, "If at the expiration of the above period of five years the party of the first part shall not desire to conduct the business of telephonic district exchange directly within said district of the party of the second part, or of merging said district with some other district" (not as has been in this case erroneously quoted, "or in said district merged with some other district"), "but shall, on the contrary, desire to have such business conducted for it, then and in such case, the party of the second part shall have the first right of acquiring the license or agency to conduct such business at such rate or rental, and upon such terms as may then be fixed and determined by said party of the first part" (p. 50, l. 2). I never knew until I heard Mr. Young's argument, that there was anything faulty in the grammatical construction of this clause, and I think your Honor will have no difficulty in parsing every word of it, or if your Honor, like the rest of us, has forgotten some of that art, any bright school boy of ten years can help you out.

5th. Emphasis was given to the period during which said contract should run, in clause 17, which provides that "the party of the second part shall not, except with the express written consent in each instance of the party of the first part obtained, make any contract with any person, firm or company for the use of said instruments, or for telephonic service extending beyond the last day of August, A. D., 1884" (p. 51, l. 30).

Now, that is the bargain these companies deliberately entered into; and it is fair to add that the Domestic Company was delighted with the situation. There is not a mention of dissent on their part to the terms of the amplified contract, when it came to them for execution, and there was no reason under the then existing circumstances why there should have been. The business was in its infancy. Its possibilities were unknown, and the probabilities, with the several contestants in the field, each operating under different patents, were, to say the least, not promising.

The contract was not harsh against the Domestic Company. They had already their signal alarm wires erected and they were rapidly becoming worthless under the formidable Western Union Edison Telephone combination, and the work of adapting them to the telephonic service was not a heavy burden. They were merely to *pay rent* for what telephones they used, *purchasing none*, and if the business did not prove successful,

they could not be much worse off than they were before. If it proved successful, why then they thought they could fall back on the 11th clause of their contract and get a renewal; (that is if they thought anything about it, and it was so much of an experiment it is doubtful if they gave the subject any serious consideration).

Could they then have peered five years into the future and beheld the consolidations which have been effected, and oppositions which have been smothered, and the business which has centered around the Bell telephone, a contract like this would never have been accepted by our friend Hubbell on behalf of the Domestic Company, if better terms could have been secured.

If he gave the matter any consideration, he knew that the Bell Company of New York *was the master of the situation*, and every clause in the contract shows that the Bell Company of New York meant to retain that mastery, *as they had the right to do*, and that all matters of doubt were to be resolved in their favor.

They reserved the right in this contract of August 6, 1879, to dictate the terms of a general license to the Domestic Company for the use of instruments (p. 46, l. 17).

They reserved the right to refuse the demand of the Domestic Company for instruments, if such demand exceeded their ability to keep pace therewith (p. 46, l. 30).

They reserved the right to revoke the Domestic Company's contract, if the rentals were not paid promptly (p. 47, l. 35).

They reserved the exclusive right of establishing intercommunication between the Domestic Company's district and other districts controlled by said Bell Company (p. 48, l. 16).

They reserved the right to regulate charges or tariffs for exchange of messages between different districts (p. 48, l. 20).

They reserved the right to establish the rate of charge to be paid to the Domestic Company for receiving communication from other districts and delivering them in their own (p. 48, l. 39).

They reserved the right of forthwith determining the contract, if the Domestic Company failed to connect their lines with lines which the Bell Company might build into the Newark district, and receive and deliver messages transmitted from adjoining districts (p. 49, l. 1).

They reserved the right to themselves and their successors and assigns, but *cast off the obligation* to purchase the Domestic Company's plant at the end of the term, as above stated (p. 49, l. 24).

They interdicted the Domestic Company from charging an extortionate rate to subscribers, so as to make the use of the telephone popular, with an eye to the future business (p. 49, l. 5).

They reserved the right to terminate the contract and take possession of the district, if the Domestic Company were derelict in entering upon and prosecuting their business (p. 50, l. 21).

They reserved the right in case the growth of business warranted it, to place their own operators or agents in the general office of the Domestic Company for the purpose of superintending the exchange of business between the respective districts (p. 50, l. 31).

They reserved the right of fixing the rate of compensation to be paid to the Domestic Company for service in receiving and delivering within its district such exchanges of business (p. 50, l. 39).

They reserved the right of fixing the compensation of the Domestic Company for receiving and delivering telegraph messages which the Bell Company might contract to transmit through any telegraph company (p. 51, l. 3).

They reserved the right to have their name (name of the Bell telephone) displayed with due prominence on all of the Domestic Company's signs, announcements, circulars, cards, and advertisements (p. 51, l. 40).

And is it any wonder, may it please your Honor, that with all this array of reservation, showing the design and intent of the Bell Company to keep this business which has developed into such wonderful magnitude, in all of its essential features, under their own absolute control, it should have provided that the renewal (if any such) should be upon such terms as they might fix and determine?

Can any one vividly imagine this Bell Company, which employed counsel capable of drawing a contract so jealously guarding their minutest interests as this contract does, entering into a loose, verbal contract, varying the terms so clearly and guardedly and accurately and minutely defined?

And yet, we are asked further along to believe that after this business was established beyond a peradventure, this Bell Company and its successor, The Metropolitan Telephone & Telegraph Company, in the midst of volumes of contracts which they were executing day by day, so intricate as to cause one to despair of unraveling or understanding them; I say that in the midst of these, we are asked to believe that the Bell Telephone

Company departed from its usual intricacies of contract and met the representatives of the Domestic Company at the Gilsey House in New York, on April 16, 1880, and without the scratch of a pen, or a mark or memorandum of any kind, made a bargain for a five years' continuance of a business no longer in its experimental infancy, but a business, which in its applicability, its usefulness, its necessity and its emolument, is the marvel of modern times. The idea is so preposterous and incredible as to be almost ludicrous. A mere statement of it reveals its utter absurdity.

Even if we were willing to admit that the representatives of the Bell Company temporarily lost their heads through some subtle charm or influence mysteriously exerted upon them by these genial Domestic gentlemen, and embarked in such a loose bargain, it is absolutely safe to say that George W. Hubbell, with his shrewdness, with his personal interest in the Domestic Company, would never have let that night pass without some recognition in writing of concessions so vital to the Domestic Company.

He is one of the most methodical members of the New Jersey bar, and his careful methods show themselves at every turn in this case.

The Domestic Company filed its original bill in this case relying alone upon the written contract of August 6, 1879. The Gilsey House interview or contract or whatever it may be called was not mentioned or even hinted at.

In Mr. Hubbell's affidavit appended to that bill, he says that the negotiations for renewal of that contract were begun by a letter written by him on January 11, 1881, on behalf of, and by the authority of his Company, to the Metropolitan Telephone & Telegraph Co., which had then succeeded to the rights of the Bell Company (nearly a year after the Gilsey House interview), and that, *thereupon*, negotiations were entered into upon the subject of the renewal of their contract, and the Metropolitan Company caused to be prepared a new contract extending the Domestic Company's license five years beyond September 1, 1884, that being the date of the expiration of their original contract (pp. 17 and 18, Court of Errors case).

But, he said, that the proposed contract, "while providing "for this five years extension, did not contain any covenant "of renewal beyond that term. And his Company, *claiming a "perpetual license*, did not at that time or subsequently *urge or "request* the execution of said new contract; and not being, "willing to accept a reduction of the rentals of their tele-



“phones, coupled with the condition that their right to the “occupation and enjoyment of their territory should cease at “the end of the five year renewal, *they did not desire, nor did “they agree* to said new contract, and *it has never been accepted “by their company”* (p. 19, Court of Errors Case).

Why, his Company is to-day in this Court, asking the Court to do for it what it *did not desire*, what *it would not agree to*, and what it *never accepted*. And they tell us there is no inconsistency here!

What answer will they make to this?

His counsel will probably tell the Court that when they refused this five year renewal, they relied, as Mr. Hubbell says in his affidavit, upon the admission of the right of renewal at the expiration of the contract, and on the mistaken idea that they had under their contract a right not only to five years, but to a perpetual contract, and therefore they declined it.

But when they saw the ground slipping away from them under Governor Bedle's masterly presentation of the law, and that their supposed right of renewal under their contract was vanishing in thin air, they suddenly discovered that their right of renewal rested upon the purchase of the Western Union plant in Newark and the Gilsey House interview (neither of which were alluded to in their bill of complaint) and not upon any negotiations of which the January 11, 1881, letter was the beginning, and they amended their bill accordingly. And then Mr. Hubbell swore that he forgot all about this Gilsey House interview, when he drew the original bill in this cause (p. 1143), and now his counsel say they were misled, because they supposed our defense was going to be merger.

But the Domestic Company went to work under their contract of August 6, 1879.

Mr. Hubbell says (p. 132, l. 29): “that they had to compete “with the powerful and rich Western Union Company that “had already established a telephone exchange of considerable “importance in Newark; that it was very hard work;” and (p. “133, l. 3), that they were compelled to spend their money “lavishly in order to counteract and compete with the West- “ern Union Company; that they were compelled to put in “telephones for nothing, upon experimental use, and that for “many months it was ‘nip and tuck.’”

All this we steadfastly believe.

They worked their soul sick (that is if a telephone corporation has a soul) and their treasury empty; and they became almost

an object of commiseration in their efforts to counteract and compete with the Western Union.

It was a bold, brave undertaking, and we may almost admire their pluck, but despise their judgment.

And while this "nip and tuck" contest between the Domestic Company and the Western Union was raging, more formidable telephone battles were being fought elsewhere.

The litigation which Mr. Hubbell took so much pains to inform himself about (p. 133, l. 18), between the National Bell Telephone Company and the Western Union, respecting the priority of one patent over another was no myth. It waxed warm and raged hot. But one day, perhaps not unknown to counsel engaged in that interesting controversy, but at least to their discomfiture, these belligerent corporations got together and settled their differences, burying the hatchet under the formidable and famous contract of November 10, 1879.

How unfortunate that this Domestic child has not imbibed the wisdom of these parental organizations and gracefully practiced the arts of peace!

This contract was between the Western Union Telegraph Company, for itself, and for the Gold & Stock Telegraph Company, American Speaking Telephone Company, and Harmonic Telegraph Company, which it represented, party of the first part, and the National Bell Telephone Company, party of the second part.

It is a formidable document. It is a literary perfection and an intellectual feast. It said those things which it ought to have said, and it left unsaid those things which it ought not to have said.

It is another example of "ponderosity of particularity," and rumor has it that so carefully were its provisions stated, that no interpretation has ever been given to any section of it by any Court, which was, of course, a serious oversight on the part of the lawyer who drew it.

But a single criticism has been offered against it. It was not submitted to the Domestic Company prior to its execution, nor were they called into the private office during its preparation.

It was the initial step towards harmonizing the telephone interests of the land.

It provided for a consolidation of the interests of all the parties to it, and for the retirement of the Western Union from the business; but, like the contract of August 6, 1879, it contained some important reservations.

These need not be gone over in detail just now, but one of them

was that the Western Union should not retire from the telephone business in certain localities where both it and the licensees of the National Bell Telephone Company had established exchanges, until the local conflicting interests could be harmonized, and until the plant of the Western Union in such exchanges was purchased at its cost price, and the National Bell was left at its own option either to buy up these local plants or cause them to be bought up, or suffer the opposition of the Western Union to continue.

This reservation embraced among others, the exchanges within a radius of thirty-three miles of the New York City Hall, and of course included the exchange of the Domestic Company.

Now let us turn back for a moment and see what our Domestic friends were doing while these companies were smoking the pipe of peace.

The "nip and tuck" contest continued; but one bright day in the early part of 1880, after months of "nip and tuck," they heard a rumor that the opposing interests of the Western Union and the parent Bell Company had been harmonized.

Mr. Hubbell made considerable effort in his testimony (p. 134, l. 16) to show that this rumor was in the form of a circular issued by W. H. Forbes, the president of the parent company, and they offer in evidence a copy of this circular, which they say was copied in New York by some man who was not sworn in the case (p. 205, last few lines, and first few on p. 206), and that is all the evidence there is of its authenticity, and so humiliating was Mr. Hubbell's failure to connect Mr. Forbes with it or to produce it, or to adduce any sort of testimony about it, that it is simply charitable to be silent on that subject.

The very first information any individual member of the Domestic Company had on the subject was in a private, personal letter from Mr. Theodore N. Vail, who was then General Manager of the National Bell Telephone Company, to Mr. Jabez Fearey. The letter is dated Boston, October 31, 1879, and is as follows. It is found on page 136.

"BOSTON, Oct. 31, 1879.

"J. FEAREY, No. 182 Market St., Newark, N. J.:

"*My Dear F.*—Nothing has been done yet regarding the consolidation of the interests *so far as Newark or New York is concerned*, the general agreement not applying to any territory where there are local interests independent of the parent companies, as neither of the parent companies had any right

"to make such an agreement. As soon as the main question is settled, those will be taken up.

"I can only say this, that as a representative of the Bell Telephone Company of New York, I will never consent to any arrangement that does not give the exchange business to that company, even if we have to fight for it the next four or five years. In case it is not arranged, the suits will go on until a decision is reached, and there is no doubt as to the result of that."

"Yours,

"THEO. N. VAIL."

Your Honor will perceive that it is a private, personal letter, and yet our Domestic friends come flouncing into Court with it, and had Mr. Hubbell swear to it, though it wasn't written to him, and though Mr. Vail never even sent his regards to him in it.

I suppose they were afraid somebody might forget all about it, and we all thought they had struck a mare's nest, and got our foot into it, for Mr. Vail didn't keep a copy of this personal letter, so we didn't know in advance what it contained.

Mr. Vail didn't suppose his personal letters to his "Dear F." would be made public, but then, there is an old adage which says something about "drowning men catching at straws."

I don't know what the straw is in this letter. By it, they had very early notice that the settlement didn't apply to Newark, and Vail expressed a personal intent that he shouldn't consent to any arrangement which didn't give the exchange business in this thirty-three miles radius to the Bell Telephone Company of New York; and I think that they must, in their exuberance of spirit, have thought that Mr. Vail meant to say that the exchange business should be given to the Domestic Company of Newark.

The first authentic information traceable to the Domestic Company on this subject is from the minutes of their meeting on February 20, 1880.

This information was imparted by Mr. John D. Harrison, the godmother of this Domestic Company, to whom they always turned in an hour of distress.

The minute says (p. 1344, l. 27):

"Mr. Harrison brought in the good news that the entire telephone interests of this section would soon be in control of the National Bell Telephone Company, and that the negotiations that had been going on for some months past had been settled to-day, and that this territory for which we had exclusive license, would come under our control."

This was indeed good news. The prospect of release from the opposition of that rich and powerful Western Union rival which pushed its own way to the front and the Domestic way to the rear "with amazing rapidity and success," was imminent.

There is no well authenticated story that on that occasion, their elation over this good news led them to run up their flag or declare a stock dividend, as they learned to do later on; but their elation did lead them to resolve (p. 1345, l. 1) "That from this date no orders be received, or contracts made for telephones to connect with the central office at less rate than \$5 per month, to be paid monthly."

And thus their first step was taken in the line of monopoly and emolument for which their soul had longed—and this Domestic corporation *had* a soul, for Mr. Hubbell in his bill says (p. 4, l. 30) that "during the existence of its contract, it *conscientiously* observed all its provisions"—and the conscience and the soul are closely allied.

Now your Honor will bear in mind that Mr. Harrison told them on this February 20, 1880, that the entire telephone interests in this section would soon be under control of the *National Bell*—not the Bell of New York—and that this territory would come under Domestic control.

Now the weeks rolled on, and no further good news reached this Domestic hoping-to-be-monopoly corporation.

But the consolidation negotiations were going on nevertheless; but they were going on with care and caution. There were tremendous interests at stake, and the negotiations were slow. For these careful Western Union and National Bell corporations had yet to learn from their Domestic brethren the art of fixing up loose, verbal contracts at the Gilsey House.

But time eventually brought about a meeting of the Domestic Company on April 9, 1880, the entire minute of which is found on page 209, and is as follows:—

"NEWARK, N. J., April 9, 1880.

"Special meeting called to consider our position in telephone matters, and how the consolidation of the New York Companies would affect us.

"Called to order, 9 p. m. President in the chair. Present, G. W. Hubbell, John D. Harrison, Jabez Fearey, Enos Runyon, and F. T. Fearey.

"Secretary moved that all other business be suspended, and all our attention be given to this telephone matter.

"Sec., carried.

"Mr. Harrison stated that all the telephone interests in New York had been combined, and there would not be any more opposition, *but the settlement did not affect Newark*, and it remained *for us* to adopt some means of taking up the plant that had been covered by the Western Union Company, and suggested that a committee be appointed to confer with the New York Company, as it had been asked by them that such a committee be appointed.

"Jabez Fearey moved that Messrs. *Harrison*, Hubbell and F. T. Fearey be appointed as said committee.

"Sec. and carried.

"Secretary said he would prefer the superintendent acting in his place, and Mr. Harrison thought it would be better for him not to be one of the committee, *but would act in concert with them*.

"The motion was withdrawn.

"Enos Runyon moved that a committee of three, consisting of Messrs. Hubbell, J. Fearey and F. T. Fearey, be appointed and ready to confer when called upon, and receive any proposition that the New York Company had to make, and *report the same back to the board for consideration*.

"Sec. H; carried.

"The importance of this settlement or adjustment was fully recognized, and the various points of our contract brought out by the President, so as to enable the committee to act intelligently in the matter.

"On motion, adjourned; 10:45 P. M.

"F. T. FEAREY, *Secretary*."

There is no suggestion in the case that they heard any more good news from February 20 to April 9.

This meeting of April 9, 1880, was "a special meeting, called to consider their condition in telephone matters and how the consolidation of the New York companies would affect them" (p. 209, l. 4).

It was not a merry gathering, and yet, hope had not entirely forsaken them, although the delay of further good news may have depressed them. Yet John D. Harrison was there, and his was always an inspiring presence to them. All eyes turned anxiously towards him. Did they wait to read the minutes of the last meeting or indulge in any preliminary performances whatever?

No ; as soon as called to order, “the secretary moved that all “other business be suspended, and *all* their attention given to “this telephone matter” (p. 209, l. 10); and then Mr. Harrison was promptly given the floor.

To diverge from the story a little :

It may be well to state just here, that a Committee of the Domestic Company appointed at this meeting went to the Gilsey House in New York, on April 16, 1880, and they allege that there a bargain was made—a bargain upon which this suit now stands—a bargain to renew the Domestic Company’s license for five years by and between the Domestic Company’s Committee and Theodore N. Vail, Amzi S. Dodd and John D. Harrison, who are alleged to have represented the Bell Telephone Company of New York, as a committee on that occasion.

These gentlemen all deny that they were there as a committee representing that company, or had any authority to so represent it ; and it is very important that all the correspondence, minutes, telegrams, letters and other conduct leading up to this interview should be examined with some care, so as to fix the positions of the gentlemen who took part in that interview.

My insistment shall be—and I am quite confident I can demonstrate to the Court—that this Domestic Committee did not go there to meet any representative of the Bell Telephone Company of New York, but to meet Mr. Theo. N. Vail, the General Manager of the National Bell Telephone Company, and to meet him as a representative of the National Bell. Of course your Honor will perceive that it requires some courage to announce any proposed demonstration in this case, lest our friends on the other side proclaim themselves deceived, and resort to another Gilsey House interview and another amendment of their bill.

Now, may it please your Honor, Mr. Harrison was at that time (April 9, 1880) a director in both the Bell Telephone Company of New York and the Domestic Company, and his remarks and conduct on this occasion are highly important—important in the information he imparted to them ; important in the warning he gave them ; and important in the lot they assigned him for future negotiations.

He told them, as the minute of that meeting says “that all “the telephone interests in New York had been combined and “that there would not be any more opposition, *but the settlement “did not affect Newark* and it remained *for us* to adopt some “means to take up the Western Union plant, and suggested that

“a committee be appointed to confer with the New York Company.”

Mr. Harrison had facilities for learning in general what was going on in the telephone world, in advance of his Domestic colleagues; and he accordingly accurately told these men that this settlement *did not affect Newark*, and that it remained *for them*, and not for the New York Company, or anybody else, to adopt some means to take up the Western Union plant in Newark.

He suggested a Committee to meet the New York Company. The minute says, “As it had been asked by them that such a committee be appointed.”

That is the nearest and *only* connection they give the Bell Company of New York with the Gilsey House interview (and they didn't get the *name* of the Company right though they knew it as well as the light of day), and it is abundantly overcome by their own writings, which show that they meant the interview to be with Mr. Vail, as General Manager of the *National Bell*.

On his cross-examination, by Mr. Young (p. 974, l. 18), Mr. Harrison says he thinks the minute is slightly in error; that the request for the committee “was by Mr. Theodore N. Vail,” who was then the President of the Bell Telephone Company of New York and General Manager of the National Bell, and subsequent transactions show that Mr. Harrison is absolutely correct on that point.

Now what did the Domestic Company do?

With the knowledge given them in Mr. Vail's private letter of October 31, '79, to “My dear F.,” that the settlement *didn't apply to Newark*; with the knowledge given them by Mr. Harrison at their meeting on February 20, that the entire telephone interests of this section would soon be in control of the *National Bell*, and not the New York Bell; with the knowledge given them at this meeting by Mr. Harrison that the New York interests had been combined, but that the settlement did not affect Newark, and the warning that it remained *for them* and no one else to adopt means to take up the Western Union plant, they tumbled at once to Mr. Harrison's suggestion that a committee be appointed, *and they actually appointed him on the committee* (p. 209, l. 21).

What did they expect him to do?

Whom did they expect him to represent?

Did they suppose he would go as a member of their Committee to New York and attempt to serve two masters?



Did they suppose that John D. Harrison would loan himself to any scheme which involved an *actual* representation of the Domestic Company, and afterwards, when it suited the purpose of the Domestic Company, have him *pretend* the part of a representative of the Bell Company of New York?

Does he need any introduction to this Court?

Does his character, as an honorable, faithful, self-made man, imbued with honesty through and through, scorning to do a mean thing or play a double game, need any defense?

"Mr. Harrison," as the minute says, "thought it would be "better for him not to be one of the Committee *but he would act in concert with them*" (p. 209, l. 25).

That is what their minute says.

They come here and tell us that he said further—as the minute does *not* show,—that he expected to be one of the New York Committee (p. 143, l. 28).

Why didn't they say that on their minute?

Why didn't they say on their minute that Mr. Harrison was to be a member of the New York Committee, and at the same time was to act the sneak-like part of a Judas and betray the New York Company by covertly acting in concert with the Domestic Committee?

Ah! they didn't dare to say that, because it was not true, and they knew that all the honesty of Gen. Grant, whom he looks like, talks like, walks like, and smokes like, would assert itself if they dared to assign him to any position involving dishonesty or dishonor.

His interests were with the Domestic Company. He was an intimate friend of and distantly related by marriage, or in some other way, to Theo. N. Vail (p. 691, l. 38), and he knew from his honest heart that his personal influence with Vail would be more effective as a friend than as a member of their Committee, and he was willing to go along and advise these men as his riper judgment dictated.

Suppose this story is true that John D. Harrison consented to play the sneak and the villain at this proposed interview, what are we to think of this Domestic Company, relying upon him as they did in every transaction thereafter, advising with him day by day, and seeking his counsel at every turn?

Do they desire this Court to believe that they consorted with traitors, and were willing to profit by treason?

So the committee was re-organized by the appointment of Mr. Hubbell and the Messrs. Fearey (p. 209, l. 29).

Can there be any doubt about the capacity in which John D.

Harrison afterward went to New York with these three gentlemen?

It is also important to note that this Domestic Committee had no authority to make a contract. They were merely, as their minute says, "to confer; to receive any proposition, *and to report the same back to the board for consideration*" (p. 209, l. 31), and of course there could be no contract under such instructions, until a proposition presented by the Committee was duly accepted by the Board.

Now, what next?

I have said that Mr. Harrison's correction of the Domestic Company's minute of April 9, 1880, that the request for the committee came from Mr. Vail and not from the Company, is fully justified by subsequent transactions, as is also the theory that the Domestic Committee went to meet a representative of the *National Bell* and not of the New York Bell.

That very night he (Harrison) sent a telegram to Mr. Vail which bears out both branches of this assertion.

Mr. Hubbell says in his testimony that at this meeting (p. 140, l. 17), "Mr. Harrison was requested to notify *his Board*, which he did" "by a telegram to Mr. Vail at Boston."

Now there is not an intimation, as I recall, in this case, that any of the Domestic Committee knew who were to compose this alleged New York Committee, excepting Harrison, until they got to the Gilsey House, and why was the *Board of the New York Bell* to be notified *by a telegram to Vail at Boston*?

Why not, in the absence of knowledge as to who were to compose the committee, send the notification directly to the Bell Telephone Company of New York, whose committee they profess they were to meet, and trust to the Company to place the matter in the hands of the proper committee?

Mr. Vail was the president of the Bell Telephone Company of New York, but he was *not the Company*, nor the *Board of Directors*, nor the *Committee*.

His position as President of the Bell Telephone Company of New York was insignificant by the side of his position as General Manager of the National Bell, at Boston—the parent company—where he was obliged to reside to perform his duties.

Ah! they knew that Mr. Vail, the friend of Mr. Harrison, was General Manager of the National Bell, and that the telephone interests were to come under the control of the National Bell, as Harrison told them on February 20, and that the New York Bell had no more to do with it than the man in the moon,

and they wanted to see a representative of the National Bell Telephone Company.

So Mr. Harrison, at the request of the Domestic Company, that night sent a telegram to Mr. Theodore N. Vail, at Boston, and it was directed to "Theo. N. Vail, National Bell Telephone Co." (p. 529, l. 7), and it said (p. 529, l. 8): "The Domestic Company have appointed a committee "to meet with *you*" (not with any committee or anybody else except Mr. Theo. N. Vail of the National Bell Telephone Co.). "Designate a time and advise."

(Signed) "JOHN D. HARRISON."

What did Mr. Vail do?

He was in Boston. He probably did not get the telegram until next day and he immediately, on April 10, 1880, wrote the following letter to the Domestic Company (p. 141):

"The National Bell Telephone Company,  
"95 Milk St., P. O. Drawer 2.

"W. R. DRIVER, Treas.,

"W. H. FORBES, Prest.,

"THEO. N. VAIL, Gen'l Manager.

Address all communications to the Company.

"In reply to yours No. 8459.

"BOSTON, April 10, 1880.

"THE DOMESTIC TELEGRAPH Co., Newark, N. J.

"*Dear Sir* :—I have to acknowledge receipt from Mr. J. D. Harrison of a telegram dated 9th inst., stating that your company had appointed a committee to meet with *me* in regard to the purchase of the Western Union Telegraph Company's plant in Newark.

"One of the conditions upon which the Western Union Telegraph Company retires from the business is that the plant shall be purchased at its actual cost.

"*As that company* will have a very considerable interest in the new consolidated company, *they object to it unless your company* will agree to buy this plant; and also agree that you will assent to the transfer of the contract between the Bell Telephone Company of New York and yourselves to the new company about to be formed.

"*These are about all the questions to be determined.* I wish you would consider them, and let *me* have at as early date as possible your views.

"I will try to have furnished to you the approximate cost as early as possible.

"Yours truly,

"THEO. N. VAIL,

"*Gen'l Manager.*"

Was it Mr. Vail's understanding when he wrote that letter that he was to meet these gentlemen as a committee of the Bell Telephone Company of New York?

Will it be said that he appended his title of General Manager to his signature from force of habit?

A prominent general in the late war became so accustomed to signing major-general after his name, that he signed a three days' notice to one of his tenants to leave his premises, "Judson Kilpatrick. Maj.-General."

But Mr. Vail is a better business man than the average general of the army. He didn't sign any of the business of the New York Bell as General Manager, nor of the National Bell, as its President.

He knew from his position in the company that the National Bell had the option of purchasing, or promoting the purchase of the various plants of the Western Union, and he knew that the Domestic Company wanted to see him as General Manager of the National Bell, and he governed himself accordingly, and wrote to them as General Manager of the National Bell Telephone Company.

See how this letter bears out John D. Harrison that the Domestic Committee was to meet Vail, and not any committee, and Vail seconded Harrison's warning that *they* must adopt means to take up the Western Union plant; that *they* must buy the plant at its actual cost as a condition upon which the Western Union would retire from the business; that they must assent to the transfer of their contract of August 6, 1879, to the new company about to be formed (meaning the Metropolitan Company).

Then he told them that these were about all the questions to be determined, and asked them to let *him* have their views as early as possible.

Is there any doubt about Vail's meaning that it was a matter merely of dollars and cents between them? Could he be more explicit than he was?

Did he hold himself out as having any semblance of authority to bind the Bell Company of New York or any other company to any contract of renewal or any other contract? Was

there a shadow of suggestion in that letter that he would *entertain* even a proposition looking to so serious a result as the extension or renewal of the Domestic Company's contract?

Did he leave any doubt as to what they were to meet him for, if they ever should meet him?

The answer of the Domestic Company to his letter is quite significant. It is found on page 529, line 17.

It is dated April 14, 1880, and is directed to "Theo. N. Vail, Esq., *General Manager National Bell Telephone Co., Boston, Mass.,*" and says:

"Replying to yours of the 10th inst., would say that our committee have considered the subject matter of your letter, and "desire to meet *you*" (not any committee of the Bell Telephone Co. of New York, or of any other company, *but you*, "Theo. N. Vail, General Manager of the National Bell Telephone Co.") "at an early date. Please appoint time and place.

"Yours truly,  
"F. T. FEAREY,  
"Secretary."

No resentment to Vail's dollars and cents proposition; no criticism on its fairness; no exception to its plain, blunt terms: "We have looked into the subject, canvassed it, gone over it, considered it, and without a suggestion of change or addition, we desire to meet you at an early date."

Mr. Vail replied by a telegram dated April 16, 1880, to the Domestic Company, found on page 529, line 33:

"*I*" (not any committee) "will meet you to-night at 8.30 at the Gilsey House, or to-morrow at 10 at 923 Broadway. Notify Harrison of this."

They undertake to make a strong point of this: that Mr. Vail wanted Mr. Harrison notified; but it will be remembered that Mr. Vail was Mr. Harrison's friend and relative; that Mr. Harrison's substantial interests were with the Domestic and not with the Bell (p. 941, l. 30), also (p. 959, l. 35); that Mr. Vail's interest in the Bell of New York was but slight, and that all of the New York Bell's interests had been bargained away to the new company, the Metropolitan (p. 976, l. 35); and what more natural than that Mr. Vail should want to do all the favor in his power for his friend and relative; and besides that he did not then know, as John D. Harrison did not then know, that the Domestic Company had assigned the part of the sneak and traitor to Mr. Harrison. But most important of all, the committee had been arranged through Mr. Harrison, and the comonest courtesy demanded that he should be notified.

Now, this business and these transactions had so many actors that it is necessary to diverge now and then from the main thread of the story, after the fashion of the novel of the day, in order to a proper understanding of contemporaneous acts elsewhere; and before entering upon a discussion of the Gilsey House interview, it seems essential that some mention should be made of the transformations occurring in telephone matters in New York.

There had been opposing interests represented by opposing companies there, as well as in Newark.

The Bell Company, from which the Domestic obtained its license, was pushing the fortunes of the Bell telephone, while the Gold & Stock Telegraph Company was a candidate for public favor by means of the Edison telephone and other patents controlled by the Western Union. (It was, in fact, the Western Union.)

The Gold & Stock Company of New York, of course, had intercommunication with the Newark Western Union Exchange, and the Bell Company of New York had exercised the option reserved exclusively to them in the Domestic contract of August 6, 1879, of establishing intercommunication between New York and the Domestic Exchange, so that the rivalry between the Domestic and Western Union was not only local, but general.

Now, let the attention of the Court be directed briefly to this subject of intercommunication between the Domestic territory and New York and the surrounding country, as the situation was at the time of the Gilsey House interview.

By reference to the contract of August 6, 1879, it will be perceived that the Domestic Company acquired the right not only to use the Bell telephone only, in the city of Newark and townships of Harrison and Kearney, but that their use of this instrument was restricted to this district, and the Domestic Company was to be permitted, as the contract says, "to establish a system of telephonic intercommunication, commonly known as the 'District Exchange System,' within said city and townships, and not otherwise or elsewhere" (p. 46, l. 20).

The Bell Company agreed that so long as the Domestic Company performed its part of the contract, it "would not authorize the use of said telephones, or any other for similar purposes within said territory, so as to interfere in any manner with the said 'District Exchange System' so to be established and built up by the Domestic Company, within said 'District'" (p. 48, l. 7).

And to make emphatic the intent of the Bell Company to limit the operations of the Domestic Company to a mere local exchange, unless the Bell Company saw fit voluntarily to give them a view of the outside world, in the very next clause—the sixth clause—(p. 48, l. 16), the Bell Company “reserves to itself “the sole and exclusive right of establishing telephonic inter-communication between said district in New Jersey hereinbefore described and other districts controlled by said party of “the first part, including all the regulations of charges or “tariffs for exchange of communications or messages between “different districts.

“And said party of the second part agrees not to make and “not to permit any one within its district to make any connection with any telephone or telegraph company, or any private “line (other than such as may be owned or controlled by the “party of the first part) for any telephone communication outside of the said district of said party of the second part; and “that when the party of the *first part* shall have established a “line or lines connecting the district of said party of the second “part with other districts, it, the party of the second part, will, “*at the request* of the party of the first part, connect with such “line or lines and receive such communications as may be “transmitted from other districts into said district of the party “of the second part, and deliver the same therein, and will “also transmit from its district to other districts any communications intended for such other districts over the said line or “lines of said party of the first part, and none other; the party “of the second part to be paid for such service such rate of “charges as may from time to time be established by the party “of the first part. And any violation of this article by the “party of the second part, shall, at the option of the party of “the first part, give to said party of the first part the right of “forthwith determining in this contract.”

That contract imposed no *obligation* upon the Bell Company to establish intercommunication between the Domestic district and surrounding districts. They reserved the *exclusive right to do it or not*, just as they saw fit, and there is nothing in the contract to prevent them at any time after they *had* established, by their own free will, this intercommunication, by that same free will to discontinue it; and if the Domestic Company had never enjoyed this intercommunication with neighboring districts, or if, after having enjoyed it for a season, it was taken away from them, none of the rights guaranteed them by the contract of August 6, 1879, would have been contravened.

Under that contract, the Domestic Company was liable to be cut off at any time from the outside world and to become isolated as a mere local exchange; and they would have had no redress under their contract, if the Bell Company, on August 6, 1879, or at any subsequent period, had established intercommunication between the surrounding districts and the Newark *Western Union* exchange.

Now, let us also briefly refer again to the contract of November 10, 1879, between the Western Union Company and the companies it represented on the one side and the National Bell Telephone Company on the other side.

This was the formidable contract, as your Honor will bear in mind, under which these corporations buried the litigation between them respecting the patent rights between the Edison and Bell instruments, and was the initial step towards harmonizing the telephone interests of the land.

At that time, the Bell Telephone Company of New York had acquired the right from the National Bell Company to use the Bell telephone in the territory embraced in a radius of thirty-three miles from the New York City Hall, and had given the Domestic Company their contract for this Newark territory, and was operating the balance of the territory itself (p. 135, l. 4).

The Western Union at that same time was either by itself or through the Gold & Stock Co. (and they were practically the same company) operating the same territory with exchanges in Newark and New York and elsewhere in the territory.

This contract, upon terms and considerations which are of no interest in this controversy, except as they bear upon this district, consolidated the interests of these two companies.

But it expressly provided that "the undertaking of the Western Union Company and those it represents to transfer all their interests in telephonic district or exchange systems \* \* \* shall not be held to include their interests in the properties (other than telephones) in the exchanges within thirty-three miles of the New York City Hall" (embracing of course the Newark Exchange) and the same section provided that "the Western Union and those it represents will as soon as local conflicting interests could be harmonized (and not before) transfer to and put under lease and license from the National Bell upon its acceptance and payment for the same as provided herein, all telephones in said New York territory." (Art. 8, Sec. 5.)

The contract further reserved to the Western Union Com-



pany the right "to continue to manufacture and supply its own  
 "telephones, notwithstanding the stipulations of this contract,  
 "to its own exchanges already established and in actual opera-  
 "tion, and subscribers thereto, and to its licensees, until the local  
 "conflicting interests between the respective licensees of the  
 "two parties hereto can be harmonized, and until any property  
 "of the Western Union at such places shall be turned over to  
 "the said National Bell, and paid for as hereinbefore provided;  
 "but said Western Union shall organize no new exchanges nor  
 "grant any new or additional licenses, \* \* \* \* \* creating  
 "new or additional conflicts or complications, *except within the*  
 "*radius of thirty-three miles from the New York City Hall;*  
 "\* \* \* \* \* and such places where such conflicting inter-  
 "ests of licensees exist, shall, until they can be so harmonized,  
 "be exempt from the operation of this contract as aforesaid."  
 (Art. 11, Sec. 1.)

The contract further provided, that "it shall operate as a re-  
 "lease to the parties hereto, and those they represent \* \* \* \*  
 "for all claims for infringement of patents on which suits are  
 "pending, &c., in territory to which this contract applies at  
 "once, but as to telephones in territory to which it *does not*  
 "*apply at once*, it is not to operate as such release, and each  
 "party *stands on its own right* in such conflicting territory,  
 "until settlements are made and interests harmonized as here-  
 "inafter provided." (Art. 5, Sec. 5.)

Your Honor will not fail to see that by the terms of this con-  
 tract, so skillfully drawn that you could tell with your eyes  
 shut that the Western Union had a hand in it—that the West-  
 ern Union Telegraph Company did not propose to get out of  
 the telephone business in this most important territory em-  
 braced in a radius of thirty-three miles from the New York  
 City Hall until the conflicting interests had been harmonized,  
 and they knew they could not be harmonized without their con-  
 sent, and they proposed to have the harmony satisfactory to  
 them if they had to continue to fight for it.

There was no district or territory in the land as important as  
 this, and there was no territory where the fight had been  
 fiercer, and the Western Union, which had "with amazing  
 rapidity and success" become a "powerful and rich corpora-  
 tion" simply by keeping its weather-eye open, did not propose  
 to be caught with any isolated plant on hand.

It has never been known to have in stock any shop-worn  
 goods, and it discreetly left this territory out of the contract of

November 10, 1879, until it could take a hand in harmonizing these conflicting interests.

The method of harmonizing these conflicting interests was pointed out in this contract. It was for the National Bell to take and pay for at actual cost these exchange plants of the Western Union located within this thirty-three mile radius.

But there is not a word of *obligation* on the part of the National Bell to do so. They might do so or not, as they saw fit, and they undoubtedly would do so or not as their interest dictated.

Neither is there a word of obligation on the part of the Western Union to transfer some of these plants and retain others to become isolated on their hands—this Newark plant for instance.

However devoutly this consummation may have been wished by our Domestic brethren, the Western Union did not manifest its affection for them in that way.

And I fail to find anything in *this* contract which would have prevented the Bell Company of New York and the *Newark Western Union Exchange* from establishing intercommunication between their districts.

Now the situation in this thirty-three mile radius—embracing the Domestic territory—between these rival companies, the Western Union and the National Bell, remained the same after the November 10th contract as it was before, except that an indication had been given that the Western Union would retire from business here if its plant were purchased at its actual cost.

Now, while the contract of November 10, 1879, provided a way out of this competition, it rested no compulsion upon either company to follow that way. They might follow it, or they might continue the warfare, just as they saw fit. In that respect, there was a coincidence in the situation in New York and here in Newark.

The New York Bell and the Gold & Stock Companies chose to accept the way of settlement provided in the contract of November 10, 1879, and agreed to merge their interests in a new company, the Metropolitan Telephone & Telegraph Company, by a contract dated April 30, 1880, found on page 56.

This new company by the terms of said contract was to be endowed with all the exchange property, pole lines, house-top lines, private lines, rights of way, privileges, good will, property and equipments, of these two companies; and also the exclusive right to the use of telephones, excepting that they were not to use them for the transaction of commercial news, gen-

eral news, sporting news, stock or market quotations or other report business; that being reserved exclusively to the Gold & Stock Company.

This new company by the terms of said contract was also to be invested with all the right, title and interest in the contract of the Bell Company with the Domestic Company of August 6, 1879.

But the new company by the terms of said contract was not to be bound to assume the position or obligation of licensor, under the contract of August 6, 1879, nor should the Domestic Company have any benefit under the contract of November 10, 1879, until it had agreed to place its licensed rights and the territory and instruments held by it, under that contract; nor until the National Bell Telephone Company or its nominee should take and pay for the exchange plant and telephone property of the Western Union within the district of the Domestic Company.

And that, until these conditions were complied with, the Bell Company of New York should hold the agreement of August 6, 1879, and all its interest in and benefit of the same to the use and for the benefit of the new company. And that the Bell Company should maintain its corporate existence so long as should be necessary to carry out the provisions of the contract.

Now what did all this mean?

It meant that the Metropolitan Telegraph & Telephone Company was not only the successor of the Bell Telephone Company of New York—upon which fact our friends on the other side lay such stress, but *it was likewise the successor of the Western Union and Gold & Stock Companies*—upon which they don't lay so much stress.

It meant that these two rival companies came together and agreed to harmonize their differences in all this thirty-three mile radius, excepting this Domestic territory, as I suppose they had the right to *agree* and the right to *except*.

It meant that the Western Union, which had some little voice in the making of this agreement, exacted from the Bell of New York, as one of the terms upon which it was made, *that it should not apply to Newark*, and that the Domestic Company should not have any of the benefits of a silenced opposition and a monopoly of business provided for in the contract of November 10, 1879, until the National Bell Company or its nominees should pay the Western Union the cost of its Newark telephone plant.

Who was meant by the nominee of the National Bell, excepting the Domestic Company itself?

Did it mean the Western Union itself?

Did it mean the new Company? That was no more a nominee of the National Bell than of the Western Union, and do our Domestic friends ask the Court to believe that the heavy two-fifths interest the Western Union held in the new company would ever have consented that they practically buy themselves out?

Mr. Vail warned the Domestic Company in his letter of April 10, that the Western Union *would not consent to that*.

The Western Union Company knew that under the contract of August 6, 1879, the New York Bell had the exclusive right to establish and maintain or to establish and discontinue intercommunication with the Domestic Company.

They knew that there was not a thing in any of its contracts or the contracts of the Bell of New York, that would prohibit intercommunication between its Newark Exchange and the surrounding territory, and they knew that unless the National Bell or its nominee—the Domestic Company—bought them out, that with their large interest in the new company about to be formed, there would be no trouble whatever in transferring the Newark intercommunication from the Domestic Exchange to the Western Union Exchange, *and I guess our Domestic brethren knew it too*.

They made a great deal of talk in this case about the effect of the New York consolidation being to make the Newark Western Union Exchange an isolated exchange; but it was the old cry of “stop thief.”

They knew where the danger of an isolated exchange lay, but they hoped by a hue and cry to divert our minds from it.

This new company is the “new consolidated company” referred to by Mr. Vail in his letter to the Domestic Company of April 10, 1880, in which he warns them that *they* must buy the Western Union plant in Newark, and assent to the transfer of their contract in order to get rid of the competition.

The terms of the contract by which the Metropolitan Telephone & Telegraph Company was to have a birth were all agreed upon at the time of the Gilsey House interview, April 16, 1880, though it does not bear date until April 30.

Still, again, before entering upon a discussion of the Gilsey House interview, something ought to be said of the conduct of those interested in the Bell Telephone Company, and leading up to it.

Mr. Vail was the President of the Company. He says that no

action of any kind was taken by the Board of Directors of his company, or the American Bell Company, that any one should be there in reference to this interview. That Mr. Dodd was not there by any appointment or arrangement with him ; that he did not know that Mr. Dodd was to be there ; that Mr. Harrison was not there to represent in any way the Bell Telephone Company of New York, and that he (Vail) was not there under any action of the Bell or American Bell Company or their directors in any way (pp. 546, 547).

Mr. Dodd says that he was accustomed to going into the Gilsey House two or three times a week, as it was on the direct route from his office to his house. That he was in the habit of meeting Mr. Vail and other gentlemen there. That he had no knowledge that Mr. Vail was coming there that night, until John D. Harrison had told him so. That he did not know Mr. Harrison was to be there until he met him, nor that there was to be a conference until Harrison told him ; and that no word was sent to him about it. That he was one of the Executive Committee of the Bell Telephone Company at that time, and that there had not been any arrangement or understanding among the members of that Committee to meet that evening nor any authority of any kind on behalf of the directors of the company for the Executive Committee to meet that night. That he did not go there at that time to act as a member of the Executive Committee, or with any expectation of meeting any of those gentlemen (pp. 743, 744 and 745).

He further says that he was a member of the Board of Trustees or Directors of the Bell Company, and as such, was familiar with their proceedings and minutes, and that the minutes were prepared by him, and that there was never by the Directors or Trustees of his company any authorization to the Executive Committee or any of its officers, to propose to the Domestic Company or to make a contract with the Domestic Company for a renewal of their then-existing contract of August 6, 1879 (pp. 747, 748).

Mr. Dodd further says (p. 777) that he was Secretary of all the meetings of the Bell Telephone Company of New York, from September 3, 1879, to the last meeting of the company, held on May 21, 1880, after which April 30th agreement, it maintained its corporate existence and functions, only so far as was needed and required by the new company, in order to carry out the provisions of the contract of April 30 (p. 63).

He gives a list of all the meetings of his company from September 3, 1879, to May 21, 1880, and singularly enough, there

was a meeting held on the afternoon of this very April 16, and that neither at that meeting or at any other did anything occur in reference to or in contemplation in any way of the Gilsey House interview, nor was there ever any authorization of any committee or individual on behalf of the Bell Company of New York with reference to the renewal of the Domestic Company's contract of August 6, 1879 (pp. 766, 767, 768, and 769).

It seems almost superfluous to investigate John D. Harrison's standing with respect to that interview with the Bell Telephone Company of New York. The Domestic Company had fixed and accepted him as their own representative, although Mr. Hubbell volunteers the statement that "he was acting as a sort of rover" (p. 144, l. 2).

Mr. Harrison says (p. 944, l. 33) he went there as an adviser of the Domestic Company; that the Bell Company never considered the subject matter of the Gilsey House interview (p. 955, l. 30); that the interview was had with Vail, so that Vail could make a fuller explanation in regard to the proposed purchase of the Western Union plant in Newark than he (Harrison) could make (p. 944, l. 37); that the Bell Company of New York had no interest at all in the purchase of the Western Union plant in Newark, because their interests had been bargained for (p. 976, l. 35), and that they were merely sort of figure-heads, simply acting until the new company should be formed (p. 977, l. 10); that at the meeting of the Bell Company, on the afternoon of April 16, he did not tell Dodd of the evening conference, because, as he says, "I rather thought Mr. Dodd would not want to be there himself. I don't think we wanted him there" (p. 979, l. 2); and that, for all he knew, Dodd just happened there (p. 979, l. 17).

Now, under the circumstances and by the authority, or want of authority, above specified, these six gentlemen met in an upper chamber in the Gilsey House, April 16, 1880.

In all this mass of testimony, covering every conceivable ground, and occupying the space of 1,376 printed pages, and engaging the close attention of many, many days, with adroit and critical, excepting and objecting counsel, who went through these letters, minutes, receipts, correspondence, statements and contracts with a fine-tooth comb, so to speak, so that nothing, material or immaterial, should escape—I say, that in all this mass of testimony, there is no claim or suggestion that any one of these telephonic disciples in that upper room had any occasion to uncork a bottle—an ink bottle—to take his pen in

hand or sharpen his pencil, or even to produce it, or to make any mark or memorandum of any kind, though, if the story told by Mr. Hubbell and the two Feareys is to be accepted, business of the greatest importance was transacted there that night, involving hundreds of thousands of dollars.

Two men might trade horses without reducing the terms of the trade to writing, and take their chances of two lawyers eventually owning the two horses as a penalty of the loose transaction; but even *that* transaction would not occur in that way, if so discreet and sound and shrewd a lawyer as George W. Hubbell is, had anything to do with it. For Mr. Hubbell, as has been seen, and as will be seen further along in the case, is very apt and ready with the pencil or memorandum.

"No contract for the sale of goods, wares or merchandise for the price of \$30.00 or upwards, no agreement that is not to be performed within one year from the making thereof, could be made without some memorandum or note in writing," if George W. Hubbell were interested either as an individual or as counsel.

Mr. Hubbell says (p. 143, l. 39): "There were present our committee, Jabez Fearey, F. T. Fearey, and myself, and on the other side, Mr. Theo. N. Vail, A. S. Dodd, John D. Harrison."

Amazing assumption! John D. Harrison, a member of the Bell Telephone Committee, after having been appointed on the Domestic Committee and accepted by them "to act in concert with them," as their minute says!

Mr. Hubbell generously adds that he was "to act as a sort of rover"!

On whose side had the Domestic Company selected him to play in this game at the Gilsey House?

Whose rover was he?

The rover, you know, is the most accomplished and adroit character in the game. Having passed through all the perils, avoided or vanquished his adversaries and gotten through the last wicket, he becomes a rover, and that side which first succeeds in securing a rover, if he be efficient and capable, has the game practically in hand.

Ingenious Mr. Hubbell! in assigning Mr. Harrison, this god-mother of his company, their supporter and adviser in every emergency, to the responsible and important position of rover in this game!

He says (p. 144): "The subject matter of the interview was the purchase of the Newark Western Union plant, and that we expressed ourselves that we did not see why, if the Bell

"Company had acquired the Western Union rights, the opposition and rivalry of the Edison Telephone Company would not naturally drop as the effect of the consolidation, and I maintained and said at this interview that I did not see why it was necessary for the Domestic Company to buy the Western Union plant. That if it became the property of the Bell Telephone Company in any way, that under our license the opposition would stop."

Again he says (p. 145): "The gentlemen representing the New York Bell Company" (meaning, of course, Messrs. Vail, Dodd, and Harrison) "were very anxious and persuasive that the matter should be concluded in some form *that night*—by our assenting to buy the Western Union plant in Newark."

If that statement be true, then John D. Harrison at that time deliberately attempted to get the Domestic Committee into doing an act which he knew would transcend their authority.

Was he not present at their meeting of April 9, when the committee was appointed, and he was selected to go along with them as their adviser, "to act in concert with them," and did he not know that they were merely authorized to receive a proposition, and report the same back to the board for consideration?

Perhaps by that time Sheriff Harrison had roved over into the realm of the Bell Company: like Poo-bah, in the "Mikado," he had lost his character as "Lord High Rover for the Domestic Company," and assumed that of "Lord High Rover for the Bell."

But, then, no one has ever, heretofore, suspected the Sheriff of turning his coat quite so readily as that!

Again Mr. Hubbell says (p. 145):

"I said to Mr. Theo. N. Vail—and, of course, to all the gentlemen collectively—'If we pay this money, we acquire a plant which is outside of our contract; now, you have agreed in your contract with us that if you wish directly to operate our territory, either as it is, or merged with some other territory, that you shall have the option of buying our plant.' But I said, 'How are we going to stand on this property—in relation to this property?'"

"I am giving very nearly the exact words of the conversation, as they were used there. It happened a good while ago, but *it made a great impression on my mind*"—so great an impression that he forgot all about it.

He says further (p. 145):



"Mr. Vail then replied, 'If we determine to operate this territory directly—your district directly ourselves—we *will buy* this property *just as we would if we purchased the property under the contract.*'

"And either Mr. Vail or Mr. Dodd said, 'And the price you pay will form a basis.'

"Then we said, 'Suppose you do not operate it directly?'

"The answer to that either by Mr. Vail or Mr. Dodd was, 'You will, then, if you pay the money, continue right on under this present contract.'

"And Mr. Amzi S. Dodd said, 'We will give you the benefit of any reduction.' And he said distinctly, 'We think they will be \$15.00.'"

Now, what did that involve?

It involved, in the first place, a misstatement of the eleventh clause of the Domestic contract of August 6, 1879, in the particular already alluded to, which makes a very serious change in its meaning.

He says that he said to Mr. Vail that the contract of August 6, 1879, provided that the Bell Company should have the option of buying the Domestic plant at the termination of the contract, unless the Bell Company "wished directly to operate our territory, either as it is, or *merged with some other territory.*"

The contract, in fact, was as follows:

"11th. If at the expiration of the above period of five (5) years the party of the first part shall not desire to conduct the business of telephonic district exchange directly within said district of the party of the second part, *or of merging said district into some other district*, but shall on the contrary desire to have such business conducted for it, then, and in such case, the party of the second part shall have the first right of acquiring the license or agency to conduct such business, at such rate or rental, and upon such terms as may then be fixed and determined by said party of the first part."

Mr. Hubbell could never have made a statement like that in Mr. Vail's presence without a correction from him; for Mr. Vail knows these contracts as your Honor knows the law, and he is as jealous of their proper rendering as your Honor is of the administration of justice.

Again, it involves a *voluntary* offer on Mr. Dodd's part to reduce the rental of telephones. For Mr. Hubbell makes no suggestion that he *asked* for any reduction.

He says :

"I am giving very nearly the exact words of the conversa-

"tion as they were used there ; it happened a good while ago, " but it made a great impression on my mind " (p. 145, l. 26).

And he must stand in the stall as he has constructed it.

Without Mr. Dodd's contradiction, which is sharp and decisive, no one would believe he ever volunteered such a statement. Men do not volunteer to give away 25 per cent. of an income, and it is no disparagement of Mr. Dodd's business qualifications to say that he likes to make money, just like the rest of his fellow citizens, and that human nature manifests itself in him as well as elsewhere.

Mr. Young asked Mr. Hubbell just there when these reductions were to take place, and Mr. Hubbell added ridiculousness to nonsense by declaring :

" Whenever the reductions were made, either during the running of our present contract or beyond the period of five years " (p. 146, l. 13).

Now, it will be remembered that the contract of August 6, 1879, was iron-clad respecting the rental of telephones during the five-year term. There was no escape from it except by the voluntary action of the Bell Company. And how rarely, your Honor, do we find the *individual* who will let go a good thing as long as he can hold on to it.

But Mr. Hubbell seems to have so charmed these Bell men, that they run out to meet him with offers of wine and cider, and pudding and pie, if his Company would by paying a mere trifle, rid *themselves* of a formidable opposition, and place *themselves* in a position to make money !

We hear about the grasping monopoly of the telephone corporations. The public prints teem with statements of their remorseless greed, but George W. Hubbell found out that at least the Bell Telephone Company of New York had a soft heart, a generous mind, and a munificent soul !

Again Mr. Hubbell volunteered :

" It had always been agreed and conceded that the Domestic Company had the right of renewal of their contract " (p. 146, l. 25).

And when my associate objected to such a very loose general statement, Mr. Hubbell saw the necessity of connecting this concession with the Gilsey House interview, and under the direction of his counsel to " proceed," he added :

" During the interview at the Gilsey House, the same matter was referred to in various ways ; and it was one of the agreed facts, upon which the interview took place, that the Domestic

"Company had the right of renewal beyond the term of five years" (p. 146, l. 36).

Now, if it "had always been agreed and conceded that the Domestic Company had the right of renewal of their contract," and that "during the interview at the Gilsey House, the same matter was referred to in various ways," and "it was one of the "agreed facts upon which the interview took place, that the "Domestic Company had the right of renewal beyond the term "of five years," then *why in the name of sense did these Domestic men ask, and these Bell men concede* that the renewal of their contract for five years should be conditional in any way upon the purchase of the Western Union plant by the Domestic Company?

What earthly reason was there that the subject should be canvassed at all, or that the renewal should depend in any way upon such purchase, and was not Mr. Vail right when he wrote them on April 10, that "they must agree to buy the plant at its actual cost and assent to the transfer of their contract," and that "these were about all the questions to be determined"?

Now, that was the whole of Mr. Hubbell's story respecting the Gilsey House interview, as detailed on his direct examination. He was not cross-examined upon it, for it was deemed just as transparent as any cross-examination could make it.

After hearing the testimony for the defense, he was recalled, but nothing of absorbing interest was elicited from him, except that (p. 1114, l. 20) he fastened upon Mr. Harrison by name, the iniquity of urging them to buy this plant then and there, without authority from their Company, or, rather, in the face of their express prohibition. And he further declares in contradiction of the witnesses for the defense (p. 1116, l. 15), that at that interview there was no talk about a new contract being drawn, which should be evidence of *assent* of the Domestic Company *to the transfer* of their contract of August 6, 1879, to the new company about to be formed.

We will see further on how Mr. Fearey supports him ; or, rather, fails to support him in this respect.

Now, let us turn our attention for a short time to Mr. Frederick T. Fearey, and his connection with the Gilsey House interview.

He is Secretary of the Domestic Company, and was Secretary of the meeting of April 9, of his Company. The minute is in his handwriting. He knew the action taken in respect to John D. Harrison accompanying the Domestic Committee as their

adviser, "to act in concert with them," and yet he swears that Mr. Harrison was at that interview as a representative of the Bell Telephone Company (p. 380, l. 17)!

Mr. Fearey says (p. 381, l. 7):

"Our Committee were asked to purchase the Western Union plant at an approximate cost of about \$12,000, which would be subject to some reduction. Mr. Hubbell asked what the position of the Domestic Company would be in the purchase of this property, and *whether it would come under our contract* which we had made with the Bell Company of New York.

"Mr. Dodd replied that if our Company would purchase the plant, *it would come under our contract*, and would form the basis of any settlement or purchase that their Company *MIGHT* make of us at any future time.

"I stated that our Company felt that they should have the benefit of any reduction in rentals, if they were made to any other company, and Mr. Harrison stated that he thought the price would be about \$15.00 per annum.

"Mr. Vail stated that the rates would be fixed by the Bell Company of Boston, and he thought probably the rate would be \$15.00."

It will be perceived that there is quite an essential difference between this statement and that of Mr. Hubbell.

Mr. Fearey says that Mr. Hubbell asked whether this purchase would come under the contract of August 6, 1879, and that Mr. Dodd (not Vail as Hubbell says) replied that "it would come under that contract, and form the basis of any purchase the Bell Company *might* make at any future time." Mr. Young in his argument says these discrepancies are the surest indication of their trustworthiness and want of concert between them; but like discrepancies on the part of the defendants' witnesses are the surest indications of their untrustworthiness and intent to deceive.

Mr. Hubbell attributed the promise of rentals at \$15.00 to Mr. Dodd, while Mr. Fearey charges that deception and sin to Mr. Vail and Mr. Harrison, and lets Mr. Dodd out of the net entirely.

Mr. Fearey further says (p. 381, l. 26):

"I also stated that our Company wanted the benefit of any reduction that would be made, and, if we made this purchase, we were entitled to all the benefit that they would give to any other company. Mr. Dodd repeated that if our Company purchased the property that it would form the basis of any settlement that *might* be made.

"I then asked Mr. Dodd what position the Domestic Company would then be in, provided their Company did not desire to purchase our property and operate its territory themselves.

"To that Mr. Theo. N. Vail replied that then our Company would go right on under our contract for another five years; that the Bell Company of New York would deal fairly with us, and give to our Company all the benefit of reductions that would be made to any other company. There was conversation carried on by Mr. Hubbell, who made some remarks which I have not yet stated."

Further on he says (p. 382, l. 4):

"These remarks were in reference to the purchase of this plant, and the position we would be placed in if they did not purchase our property, and it was understood by our Committee that if the Bell Telephone Company did not operate our territory at the end of our contract, nor purchase our property before the end of the first five years, that we should continue on and operate that territory and receive from the Bell Telephone Company of New York all the benefits that they could give us."

Now, let it be observed that Mr. Hubbell says that Mr. Vail said that if the Domestic Company bought this property at the end of the contract, Vail's Company would purchase it *"just as we would if we purchased it under the contract."*

And Mr. Fearey gives voice to the very same idea when he says that Mr. Hubbell asked what the position of the Domestic Company would be, in the purchase of this property, and whether it would come under our contract, and Mr. Dodd replied that "if our Company purchased the plant, it *would come under our contract.*"

What is there in all this testimony, this important testimony, of Messrs. Hubbell and Fearey, *but to show that there should be no deviation from this contract, and that every suggestion should relate to and be controlled by its written terms?*

Now, what does this contract under which this purchase might come, as Messrs. Hubbell and Fearey say, provide for with respect to a purchase by the licensing Company at the end of the term?

An examination of the 10th clause will well repay perusal at this time.

It says (p. 49, l. 24):

"10th. At the termination of this contract by limitation of time, or for any cause herein contemplated, it shall be optional to the party of the first part, its successors and assigns, to pur-

“chase from the party of the second part the telephonic lines  
 “and telephonic business of the party of the second part within  
 “its said district, at a fair and reasonable price to be agreed  
 “upon by said parties at the time, without having any regard  
 “to any valuation for good will.

“And in the event that the parties hereto may not be able to  
 “agree upon such valuation, the same shall be arrived at by the  
 “arbitration of three disinterested persons, one of whom shall be  
 “chosen by each of the parties hereto, and the two so chosen to  
 “choose a third, and the decision of the majority of such arbiters  
 “to be final as between the parties hereto.

“But nothing herein contained shall be construed as making  
 “it obligatory upon the party of the first part to purchase the  
 “business and property of the party of the second part.”

Now, Mr. Dodd says (according to Mr. Fearey), that if purchased by the Domestic Company, it would come under the Domestic Company’s contract, and Mr. Vail says (according to Mr. Hubbell), that the Bell Company would purchase it at the end of the term, “just-as we would if we purchased it under the contract.”

And the contract gave them the specific option of purchasing or not, as they saw fit—and they have decided not to purchase it at all, owing to the exorbitant price asked for it.

The only capital stock of the Domestic Company that was ever paid up in cash was \$50,000; the usual order of things with respect to the other \$50,000 stock of their Company was reversed.

Paid up capital stock is usually paid out of the bank account of the stockholder into the treasury of the Company; but in this case, this last \$50,000 worth of stock was paid out of the treasury of the Company into the bank account of the stockholder in the shape of a stock dividend.

Mr. Jabez Fearey says that the New York & New Jersey Telephone Company, one of the defendants in this suit, offered the Domestic Company \$150,000 for their plant and that the offer was declined (p. 1265, l. 28-34).

This was in February, 1883. Just think of that! They had had this profitable business for three years at an investment of \$50,000 and they declined three times the cost of it, because the amount was not thought sufficient.

Now, as this argument proceeds, your Honor will see that great stress is laid upon a new contract proposed between these companies, and what the contract was to be, and what its purpose was to be, and where it originated, is of the essence of this controversy.

As has already been stated, Mr. Hubbell declares that at this interview there was no talk about a new contract being drawn which should be evidence of *assent* of the Domestic Company to the transfer of their contract to the new company about to be formed (p. 1116).

Now, let us see what Mr. Fred. T. Fearey says about that. I will read from page 389:

"Further direct by Mr. Young:

"Q. Were you not informed at the time of your meeting at the Gilsey House, that the Metropolitan Telephone & Telegraph Company was being formed?

"A. Yes, sir.

"Q. Was that spoken of at that meeting?

"A. It was stated by Mr. Vail that it would be necessary for our Company to *assent to the transfer* of the license of the Bell Telephone Company to the Metropolitan Telephone & Telegraph Company that was then being formed, and further that the Metropolitan Company *would want to draw up a new contract*.

"Q. Did Mr. Vail state at this meeting at the Gilsey House, that the Metropolitan Telephone & Telegraph Company would want to draw up a new contract?

"A. Yes, sir.

"Q. Then, at the meeting at the Gilsey House, the subject of a new contract between the Domestic Telegraph & Telephone Company and the new company about to be formed, was talked about?

"By Defendants' Counsel: That is objected to in that form, as an improper way of getting in testimony.

"A. Yes, sir, it was.

"Q. Do you remember whether that statement of Mr. Vail's was made in general meeting, or was it an aside?

"By Defendants' Counsel: I object to the form of the question.

"A. It was made at the meeting in the Gilsey House, and was one of the final remarks that were made on the subject of our meeting, when we decided to buy the property and *assent to the transfer* of our license to the Metropolitan Telephone & Telegraph Company, which was being formed, *they would want to draw up a new contract; that was the language of Mr. Vail.*"

And then Mr. Young was apparently disgusted, and turned his attention to more delightful themes.

Mr. Young, however, is not the sort of a man to be led into a

chasm, and left there, if there is a chance of extrication, and on the rebuttal he returned with Mr. Fearey to the charge ; but Mr. Fearey was no better charged than before.

Mr. Young's success will be found on page 1170, as follows :

“ Q. Mr. Vail and Mr. Amzi S. Dodd, and I think Mr. Harrison, “ swore that at the meeting in the Gilsey House, a new contract “ between the new company and the Domestic Company was “ spoken of as the best way, perhaps, to get your *consent to the* “ *transfer* of your license with the Bell Telephone Company, to “ the Metropolitan Telephone & Telegraph Company, and also “ to give your Company the benefit of the use of the Edison in- “ struments and patents in this exchange at Newark. Have “ you any recollection of any such statement or suggestion at “ that interview in the Gilsey House?

“ A. Nothing, sir, that related, sir, to any Edison patents or “ any benefits we might receive from coming in under the Edi- “ son patents.

“ Q. Or?

“ A. Or that the contract mentioned in any way was to be “ given to us for that specific purpose.

“ Q. Was there anything said as to the contract being desira- “ ble in order to evidence your *assent to the transfer* of your “ license to the new company?

“ A. Mr. Vail said that it would be necessary for us to give “ our *consent to the transfer*, and that probably the Metropolitan “ *would want to draw up a new contract*.

“ Q. But this new contract that was spoken of—was it a con- “ tract to be drawn in order that you might *assent to the trans-* “ *fer* of your license, or for some other purpose?

“ By Defendants' Counsel: Objected to as not giving the con- “ versation and as leading, and because he has been examined “ upon the same subject matter before.

“ A. My recollections of the matter are that the expression “ ‘give our *consent to the transfer* of our license,’ was made “ about the same time, when Mr. Vail stated that *in all proba-* “ *bility they would have to draw up a new contract*.

“ Q. What, then, did you understand at that interview, was “ the object of drawing up a new contract?

“ By Defendants' Counsel: Objected to as illegal, and as not “ giving facts.

“ A. Well, our arrangements being talked about there were “ covering the various matters in controversy, the inducements “ that had been held out to us at the meeting. They urged us “ to buy the plant, and then this question of a new contract



“followed ; all this conversation, and if a new contract was to be drawn we understood that any benefits that were to be given to us in these arrangements we had made there would be included in that paper. There was nothing said to my recollection, that referred in any way to any benefits which we were to have from any Western Union patents.”

Then Mr. Young was apparently more disgusted than before, and again turned his attention to more delightful subjects, and I do not think he ever again broached this subject to Mr. F. T. Fearey, certainly not in the presence of counsel in this case.

Possibly he was apprehensive lest he, too, should rove into the fold of the Bell Company.

This is not the only instance in this case where Mr. Fred. T. Fearey refused to go to the extremity desired of him.

Now, shall we briefly consider Mr. Jabez Fearey's version of this wonderful game at the Gilsey House, where hundreds of thousands of dollars worth of business were bartered away without the opening of an ink bottle or the scratch of a pen?

At the outset of his testimony, he takes decidedly advanced, refreshing and novel grounds respecting the effect of the consolidation of the Bell and Western Union interests.

He says (p. 432, l. 2):

“As near as I can remember about it, there was to be a consolidation of interests there which was not to interfere with our affairs, *but was more to benefit us.*”

It was never suspected that the sentiment which had fastened itself with such a grip upon Mr. Hubbell respecting the lovely, liberal, munificent, magnificent and magnanimous disposition of this delightful Bell Company, was contagious ; but Jabez Fearey had certainly caught it, and “caught it bad,” as the boys say.

Certainly the Bell Company would always cast its arms around this poor little Domestic child. It would say to this rich and powerful rival which “pushed its way to the front with amazing rapidity and success,” “Stand back : we have given this Domestic Company the exclusive right for five years to use the Bell telephone (none other); and we have given them the option of renewal, which places the terms of renewal in our own hands, and, without any knowledge as to how harmoniously we shall get along together, or what our relations may be at the end of that term, we propose to resolve everything in their favor, and make no contracts which shall not

"be, as Jabez Fearey says, '*more to benefit them than anything else.*'"

Who would ever have thought that there was so much sentimental gush in these reputed-to-be-soulless corporations?

This Mr. Fearey backs up his brethren by saying that Mr. Harrison was at the Gilsey House interview as the representative of the Bell Company, though he, too, was present at the meeting of his company on April 9, when Mr. Harrison was directed to go along with these young men and exercise his motherly care over them in the capacity of their adviser. And to "act in concert with them."

A most remarkable unanimity of sentiment among these gentlemen respecting the representative character of Mr. Harrison at that interview! But, alas! alas! That contrary, tell-tale, contradictory minute of the Domestic Company of April 9, and made up as it was when all was smiling and serene, with no thought of litigation "rolling across their peaceful breasts"!

When Jabez Fearey was asked to state what occurred at this interview, he said (p. 435, l. 19):

"Well, we met there for the purpose of arranging the purchase of the Western Union plant in the city of Newark at an approximate price of \$12,000. We were given to understand *by several gentlemen* that if we purchased that plant, our contract would be renewed, *as per agreement*, and that we would receive a reduction in rentals, the same as would be made to other exchanges, and the price was stated to be \$15.00 instead of \$20.00."

And he says further (p. 435, l. 3):

"It was agreed that whatever price we paid was to be the basis on which they were to pay us, *if they bought us out.*"

And he says further (p. 435, l. 23):

"Well, the understanding was that if they did not wish to take the business here, that we could continue on that contract at better terms, if better terms were made to other exchanges. *That is my impression of the conversation,*" and that they were to continue "for an additional term of five years" (p. 435, l. 31).

He stated further (p. 439), that he was now in his fifth year as Manager of the Western Union office in this city and had worked for the same Company before; that he had been in the telegraph business for thirty years.

Now, let it be observed,

1st. That they went there for the purpose of arranging the

purchase of the Western Union plant at an approximate cost of \$12,000; and no other purpose is mentioned by Mr. Fearey.

2d. That after they got there, they were given to understand by several gentlemen (and no pretense is made of mentioning any name) that if they purchased this plant, their contract would be renewed as *per agreement*.

What agreement?

Why, of course, the 11th clause of the contract of August 6, 1879.

There was at that time no other agreement, real or pretended, and this Court and the Court of Errors and Appeals have said that that agreement is too vague to be enforced.

3d. That whatever price they paid was to be the basis on which they were to be paid, "*if they bought us out.*"

Showing that there was no thought of departure from the option reserved in the contract of the Bell Company to buy them out or not, as they saw fit.

4th. That the understanding was that if the Bell Company did not wish to take the business here, the Domestic Company would continue on that contract at better terms if better terms were made to other exchanges.

And then he says, "that is my *impression* of the conversation."

Mr. Jabez Fearey distinctively negatives the statement of Mr. Hubbell that better terms were to be given during the then *existing* contract. He says the understanding was that if the Bell Company did not wish to take the business here—When? Why, of course at the end of their contract—that then they could continue on on better terms.

It takes an overwhelming strain of the English language to say that the Domestic Company could continue on under their present contract until that contract had expired!

And "that is my *impression* of the conversation."

A conversation which according to this Domestic story (and I submit it is not the kind of story that any man who thought of the future of his children would want instilled into their domestic life) I say, a conversation which is made the basis of this formidable litigation, which was to be a matter of life or death to the Domestic Company after the expiration of their then existing contract; which involved a continuance for five additional years of business which enabled this Domestic Company to earn enough money from June 17, 1880 (the time when this Western Union plant came into their possession), to May 22, 1882, to pay off their notes of \$11,500 given for its purchase,

pay all their expenses, pay how many dividends we do not know, and to pay as we do know by the testimony in this case, on the 22d of May, 1882, out of their surplus earnings, a stock dividend of \$50,000; and a business which was increasing in volume and value from year to year with "amazing rapidity and success,"—I say, this conversation made merely an *impression* on Jabez Fearey, who was receiving \$60.00 per month as Superintendent of the Domestic Company, and held \$13,500 out of the \$50,000, then capital stock of the Company.

And what are we to think of that?

To show how little memory Jabez Fearey has about anything, I beg to read a little of his testimony as to circumstances which occurred but a very short time since.

I will read his cross-examination beginning on page 439.

"Cross-examined.

"Q. When was your attention first called by anybody to the interview at the Gilsey House, and by whom?

"A. Well, I don't understand your question.

"Q. What don't you understand?

"A. Well, the interview at the Gilsey House; I was there at that interview.

"Q. Now, when was your attention first afterwards called to it?

"A. Well, my attention was called to the interview by the officers of our Company at our next meeting.

"Q. Had you forgotten the conversation at the Gilsey House?

"A. No, sir.

"Q. You recollect when this bill was filed first, don't you, for to get an injunction in the month of August, 1884; you recollect the fact, don't you?

"A. Well, I believe there was such a bill filed.

"Q. You didn't make any affidavit to the original bill, as I understand it, did you?

"A. (A pause.)

"Q. You didn't to your recollection, did you?

"A. Well, I am trying to remember.

"Q. Well, you don't recollect it?

"A. I don't remember distinctly now.

"Q. You did make an affidavit when the application was made a second time for an injunction, didn't you?

"A. Well, that I could not say positively now, it was some-time ago.

"Q. Don't you recollect making a long affidavit upon which

“they made an application for an injunction on the part of the Domestic Company?

“A. (A pause.)

“Q. Have you forgotten if you did make it?

“A. I could not remember distinctly now.

“Q. Do you recollect being sworn July 24, 1885, before Andrew Kirkpatrick, Master of the Court of Chancery, to an affidavit upon the subject of the interview at the Gilsey House?

“A. Now I remember something in connection with going to Mr. Kirkpatrick's office.

“Q. Don't you remember whether you subscribed and swore to an affidavit at that time or not?

“A. I believe I did.

“Q. Do you feel quite sure or not?

“A. Well, there was an affidavit of some kind, I know; Mr. Hubbell went with me to Mr. Kirkpatrick's office.

“Q. Do you know who drew that affidavit?

“A. I wouldn't be certain.

“Q. Did you read it?

“A. Well, it was read, I know that, in my presence.

“Q. Was it prepared in your presence, or simply read in your presence?

“A. I think it was read in my presence.

“Q. It was produced to you already prepared and read, wasn't it?

“A. I wouldn't say positively that it was only read to me; I may have had something to do with it when it was prepared.

“Q. Do you recollect any interview when you gave any facts upon which to prepare it to anybody?

“A. I may have done so.

“Q. Have you any memory of it?

“A. I don't distinctly remember it; no, sir.

“Q. Now, previous to the taking of that affidavit, can you tell when you had any conversation with Mr. Hubbell, or your brother, or the counsel for the complainant, or anybody else, with reference to this interview at the Gilsey House?

“A. Well, we have had a good many conversations.

“Q. When, first after the bill was filed, if at all?

“A. Well, I can't give you the date or time.

“Q. I don't understand, now, Mr. Fearey, that you undertook to relate what this one said and that one said at that interview; you don't give the names of the individuals who said it?

“A. No, I don't.

"Q. I don't suppose, if you were asked now, to state with accuracy what either one said, that you could do it, could you?"

"A. Do you mean at the Gilsey House?"

"Q. Yes.

"A. Well, pretty near it.

"Q. You undertook to do it here as near as you could come at it in your evidence, didn't you?"

"A. Yes, sir; I think I did.

"Q. What time did you meet that evening in conference, I mean the whole of you?"

"A. Nine o'clock, I guess.

"Q. And continued until midnight?"

"A. Well, we got away from there about midnight.

"Q. You continued the conversation and discussion then for a period of nearly three hours?"

"A. No, I said we stayed at the Gilsey House until near midnight.

"Q. How long were you in conference?"

"A. It may have been an hour and a half, or it might have been two hours.

"Re-direct: to Mr. Young.

"Q. Do you remember coming to my office and telling me what you knew about this Gilsey House interview, with a view to the preparation of an affidavit?"

"A. Yes, sir.

"Q. Did you state to me at that time the facts which were afterwards incorporated in the affidavit?"

"By Defendant's Counsel: That is objected to as leading, and as not a re-direct examination, and as immaterial.

"A. I did.

"Q. Do you know whether a stenographer was there at that time?"

"A. It seems to me there was one.

"Q. And did you then and there at that time state the facts which were put into this affidavit, and subsequently sworn to by you?"

"A. Yes, sir.

"By Defendants' Counsel: The same objection.

"Q. The purpose for which that affidavit was to be used, do you know what it was?"

"A. It was to be used in our case.

"Q. But exactly for what purpose or exactly at what stage of the case, did you know that?"

- "A. I don't remember distinctly now.
- "Q. Now, do you remember whether those facts stated to me at my office at that time were incorporated in an affidavit which you subsequently swore to on the same or following day?"
- "A. I believe they were.
- "Q. Was it on that day on which you stated it to me, or was the affidavit presented to you on the following day?"
- "A. I could not say positively, but I believe it was the following day.
- "Q. And then when it was presented to you it was presented in the form in which you had stated the facts to me on the day previously?"
- "A. Yes, sir.
- "By Defendants' Counsel: The same objection.
- "Re-cross:
- "Q. Do you recollect this at all?"
- "A. Yes, sir.
- "Q. Have you any recollection of it?"
- "A. Yes, sir; I recollect it now.
- "Q. Do you know when it was?"
- "A. I don't remember very well about the time.
- "Q. Had you ever been in conference with Mr. Young before that about this case?"
- "A. We might have had some conference about it.
- "Q. Do you recollect anything about it?"
- "A. Not any definite time.
- "Q. Do you know what the affidavit was to be used for?"
- "A. It was to be used in our case.
- "Q. On what of it—for what?"
- "A. Well, as against the other company.
- "Q. For what? do you know?"
- "A. It was to be used in our bill against the other company.
- "Q. Was it before or after the last injunction was obtained?"
- "A. I don't remember the date.
- "Q. You can't even tell that—whether it was before or after the injunction was obtained?"
- "A. I could not remember positively; no, sir.
- "Q. How long were you at Mr. Young's office at the time you speak of?"
- "A. Some little time; I could not say as to the exact time.
- "Q. Did he ask you questions?"
- "A. We had some general conversation in reference to the matter.

"Q. Do you know whether a stenographer was there or not?

"A. I believe there was.

"Q. Have you any memory about it?

"A. That is my recollection about it.

"Q. Do you know who he was?

"A. I think it was Mr. Knight."

A man who has no better memory of recent important and solemn events than that, ought not to have his testimony weigh for anything whatever.

As I have stated, Messrs. Vail, Dodd, and Harrison all deny emphatically, and particularly the statements of the Messrs. Fearey and Hubbell respecting this Gilsey House interview.

Now, the conduct of these two corporations subsequent to this wonderful Gilsey House interview, is quite as important in the absence of any written memorandum of what transpired there, or of what was discussed there, or of what was agreed upon there, as their conduct antedating it.

Mr. Vail had promised the Domestic Company, in his letter of April 10, that he would try and have furnished them the approximate cost of the Western Union plant as early as possible, and he set about at once, in his business-like way, to redeem his promise, and four days after the Gilsey House interview, to wit, on April 20, he sent them a statement which he had received as *General Manager* of the *National Bell Company* from the Western Union, showing the approximate cost of the Western Union Exchange, at \$11,134.38.

This statement is found on page 564, and is as follows:

"NEW YORK, April 20, 1880.

"THE NATIONAL BELL TELEPHONE COMPANY—THEO. N. VAIL,

"General Manager, Boston, Mass.

"*Dear Sir* :—The following is the approximate cost of the  
"Newark, N. J., Exchange :—

"Office expenses to March 1, 1880,	\$2,579 28
------------------------------------	------------

"Line       "       " April 1, 1880,	3,487 90
--------------------------------------	----------

"Material furnished by supply department, March 1, "1880,	5,077 20
--	----------

"Total, including operating expenses;	\$11,134 38
---------------------------------------	-------------

"Very respectfully,

"(Signed)       H. H. ELDRED,  
                  "*Gen'l Manager*."



He wrote them a letter at the same time which bears out in every line that only dollars and cents had been considered in this transaction.

It is found on page 563, and is as follows :

“ BOSTON, April 20, 1880.

“ DOMESTIC TELEGRAPH COMPANY, Newark, N. J.

“ *Gents* :—Enclosed please find copy of statement just furnished by the Western Union Telegraph Company, in regard to the Newark Exchange. I have written them, asking for “ an explanation of the items, ‘office expenses’ and ‘line expenses.’

“ As I told you, the plant will be transferred at its actual cost, without regard to the profit or loss in operating the same. “ It strikes me, however, that if the material furnished by the “ supply department is correct at \$5,077.20, then the cost of the “ placing the same is very low.

“ Yours truly,

“ THEO. N. VAIL, *Gen'l Manager*.”

*This important letter the complainants had in their possession, but failed to offer it in evidence.*

It was written from Boston and written *in his official capacity as General Manager of the National Bell*, and contains no suggestion of a renewal of the contract of August 6, 1879, or of a reduction in rentals, or of an obligation to buy out the Domestic plant whether or no, at the end of the contract, as alleged in the amendments to the bill.

It was a great oversight on Mr. Vail's part not to have mentioned these little items (as great an oversight as their failure to offer this letter in evidence), and no doubt the Domestic Co. reprimanded him for his negligence when opportunity offered! We will see about that farther on.

Now, Mr. Vail told them in this letter that he had written to the Western Union for an explanation of some of the items contained in the statement, and on the 23d of April, he sent them the response of the Western Union to his inquiries, and wrote them another letter from Boston, and as *General Manager of the National Bell*.

The Western Union letter is found on page 566, and is as follows:

" NEW YORK, April 22, 1880.

" NATIONAL BELL TELEPHONE CO., THEO. N. VAIL, Esq., Gen.  
" Man.

" *Dear Sir:*—Yours of the 21st inst., relating to the cost of the  
" Newark Exchange, at hand.

" The figures given were received in answer to telegram sent  
" at your request while here, and give in gross all classes of ex-  
" penditure on account of the exchange. A separated state-  
" ment is being prepared in the usual form, excluding all oper-  
" ating expense, and will be forwarded to you at an early  
" date.

" The Newark plant covers only the exchange property and  
" line, the New York trunk wires being leased from the Con-  
" tinental Company, and the Orange line being included in the  
" cost of that exchange.

" Yours truly,  
" (Signed) H. H. ELDRED, *Gen'l Manager.*

Mr. Vail's letter is found on the same page, and is as fol-  
lows:

" BOSTON, April 23, 1880.

" DOMESTIC TELEGRAPH COMPANY, Newark, N. J.

" *Gents:*—Referring to *our* letter of the 20th inst., with regard  
" to the Newark Exchange, *we* enclose herewith copy of a let-  
" ter which *we* this day received from the West. Union Tel.  
" Co. *We* shall be glad to hear from you upon the *whole mat-*  
" *ter* at your earliest convenience.

" Yours truly,  
" THEO. N. VAIL, *Gen. Manager.*"

This letter was also in possession of complainants, but they  
failed to offer it.

Now, here again, Mr. Vail very provokingly refrained to  
mention these little matters of the renewal of the contract, the  
reduction of the rentals, or the purchase of the plant at the  
end of the contract set out in the amendments to the bill.

They soon slipped away from Mr. Hubbell's memory. Could  
Mr. Vail have forgotten them, too? Or did his modesty prevent  
him from speaking? The girl who got two letters in one week  
from her swain, said his modesty prevented him from declar-  
ing his love; but if he'd only given her half a chance she'd  
take the bull by the horns herself.

And sure enough, Mr. Vail has now written twice a week,

and hasn't declared himself. But, oh, the golden opportunity he gave this blooming Jersey plant when he said, "We shall be glad to hear from you upon *the whole matter* at your earliest convenience."

Could he have given them a broader invitation than that? Had they any excuse now to longer refrain to open their whole heart—without blushing—upon this *whole matter* of renewal, reduction and purchase which had been agreed upon at the Gilsey House?

How well they availed themselves of it will be seen further on.

Now let it be borne in mind that these letters and statements were forwarded by this General Manager of the National Bell Co. to the Domestic Co. *immediately after the Gilsey House interview*, and before the following meeting of the Domestic Co., which took place on April 24, 1880; so that at the meeting of April 24, 1880, the Domestic Co. had figures of importance before it for discussion.

Now, what did these Domestic gentlemen do after this Gilsey House interview?

Mr. Hubbell says (p. 148, l. 1):

"We came back from that interview and reported to our board what we had done; what the proposition was." He didn't say *when*. He didn't dare to, for the character of the report was fatal to him, as will be seen.

Mr. F. T. Fearey says (p. 384, l. 19):

"Our Committee reported to our Company that we were *progressing in the matter of the negotiations*, and stated to our Directors what promises and inducements had been held out to us if we purchased the property." He had to say *when*. For by that time we had fished out when it was and the character of the report.

And Mr. Jabez Fearey says (p. 436, l. 17):

"Our Committee made a report to our Company in accordance with what I have stated."

Now what did they report?

Their next meeting after the Gilsey House interview was on April 24, 1880. The entire minute of this meeting is in evidence, and offered in evidence by the Defendants in the case, and found on page 1342, and is as follows:

"NEWARK, N. J., COMPANY'S OFFICE, April 24, 1880.

"Regular monthly meeting called to order 9.30 P. M., President in the chair.

“ Present, George W. Hubbell, Enos Ruynon, John D. Harrison, Edward Weston, J. Fearey, and F. T. Fearey.

“ Minutes of previous meeting were read and approved.

“ Report of Treasurer approved.

“ Report of Superintendent approved.

“ Communication from M. R. Dennis & Co., asking for special rate of \$100 per annum and pass on Orange Company's line for telephone at one on Orange and two on Newark.

“ Secretary instructed to notify that we could not offer better rate than \$5 mo. in Newark, and that we had no control over the Orange Exchange, and arrangements would have to be made with them direct.

“ Communication from German Hospital asking for reduced rate for a telephone.

“ Laid over till next meeting.

“ Letter from District Telegraph Company of United States and Canada, requesting a representative at their annual meeting to be convened at Baltimore, July 12, 1880.

“ Mr. Hubbell moved that the Superintendent be appointed to attend said meeting.

“ Superintendent thought best to look after home duties, and respectfully declined.

“ Motion withdrawn.

“ Mr. Harrison moved that the Secretary represent the Company at said meeting.

“ Secretary said he would consider it an honor, and be glad to accept.

“ Sec., carried.

“ Question of our right of control over private lines under our existing contract. Referring the case of Barnett, who had paid the *Bell Telephone Company of New York* \$50 for rent of instruments to April 1, 1881.

“ Secretary moved that this matter be referred to the President for reply.

“ Sec., carried.

“ Committee appointed to confer with the *National Bell Telephone Company of Boston* relative to the purchase of property of Newark Exchange.

“ Committee reported progress, and continued.

“ Enos Runyon moved that said Committee be empowered to purchase the plant at lowest price that in their judgment they thought said property was worth.

“ Sec., carried.

“ After an informal talk, on motion adjourned 10.30 P. M.

“ F. T. FEAREY, *Secretary*.”

John D. Harrison was present. Had doubtless roved back into the Domestic Co. again, and the minute does not show that he was brought to the bar and reprimanded for attempting to put them into a hole at the Gilsey House.

Now, your Honor will see how carefully this Domestic Co. treated all matters great or small which came before it for consideration.

Geo. W. Hubbell never did a slip-shod act in his life, and his master head and hand are seen in every line of these minutes.

Note how carefully they dealt with the proposal of the Horse Railroad Co. for a special rate for telephones—a small matter, and yet they expressed in their minutes precisely what they proposed to do with it.

The German Hospital asked for a reduced rate. Charitable institutions are apt to do that sort of thing, and so careful were they in their dispensations of charity, that they laid even that over until the next meeting. They didn't have very much for charity at that time.

They had received a letter from the District Telegraph Company of the United States and Canada, requesting a representative at their annual meeting in Baltimore, soon to convene. This was undoubtedly just such a circular as every telegraph and telephone company in the country received at about that time, and doubtless the most of them found their way into the waste basket.

But the Domestic Company appointed their Superintendent to go ; he declined, and the Secretary was appointed, and accepted the honor with gladness, as their minute says.

They considered even this trifling affair of sufficient importance to spread their whole proceeding with reference to it upon the minutes.

The question of the Domestic Company's right over private lines came up, and they referred that to the President with power. And let your Honor's attention be directed to the fact that they knew the difference between the Bell Telephone Company of New York, and the National Bell Company of Boston, for this part of the minute recognizes the distinction in terms by "Referring to case of Barnett, who had paid the *Bell Telephone Company of New York*, \$50 for instruments."

And so precise and particular were they that their minute shows even the minute (9.30 P. M.) when they convened, and the minute (10.30 P. M.) when they adjourned.

And so your Honor will see that they, too, entered upon every transaction "with all the ponderosity of particularity."

Any one who enjoys the acquaintance of their President will see his careful disposition as plainly delineated in all their deliberations and conduct as if they were labeled, "The Life and Adventures of George W. Hubbell."

Mr. Hubbell was the Chairman of their Committee. As has already been intimated, and as this Court very well knows, he is a shrewd, trained, cultivated, far-seeing and sagacious lawyer. He has been at the bar for fifteen years, and he has never been seen with his feet upon the table waiting for business.

He has been active and successful, and many of us know to our sorrow that Geo. W. Hubbell's mind and training never allow him to leave a point uncovered or subject to a misinterpretation, if pen and ink will make it plain and certain.

Now, of course, a bargain of such transcendent importance as that entered into at the Gilsey House, if the Domestic story be true, would not be left to the recollection of anybody, even though in the exciting scenes of the Gilsey House everybody forgot to make a memorandum of it.

Yet eight days have now intervened, and the "passions have had time to cool,"—as they say in criminal law,—and Mr. Hubbell's versatile and ready pen has not been dormant.

A report of vast importance to the Domestic Company was to be made; *for they were directed to report*, and it would not do if Geo. W. Hubbell—and I submit to your Honor, if anybody else, even of the most ordinary business capacity—had anything to do with it, to leave it subject to the lapse of human memory.

This report must show, that, in the language of their amended bill (p. 21), "on the 16th of April, 1880, at the Gilsey House in "the city of New York, the Domestic Company was urged by "the Bell Telephone Company of New York, to purchase and "pay for the telephone plant of the Western Union Telegraph "Company of the city of Newark, and as an inducement to "said purchase by the Domestic Company of said plant, and in "consideration thereof, it was definitely agreed by the Bell "Telephone Company of New York, that if, at the expiration of "said Domestic Company's contract, the said Bell Telephone "Company of New York should determine to carry on said "telephonic business in said Domestic district, it, the said Bell "Telephone Company of New York, would purchase said "Domestic Company's plant and pay therefor its increased cost "by reason of said purchase.

"And, also, that if at the expiration of said contract, the said "Bell Telephone Company of New York should determine not "to conduct said telephonic business in said Domestic Com-

“pany’s district, it would renew said contract for the period of five years upon the same terms as provided in its existing contract, and further, would give to said Domestic Company the benefit of any reduction in the rentals of its telephones, if such reductions were then made to any of its licensees.

“And, also, that it was then agreed by said Bell Telephone Company of New York, that during the running of the existing contract, it would give to the Domestic Company the benefit of any such reduction in rentals which it might make to any of its licensees.”

Now I say that Mr. Hubbell is exceedingly ready with his memoranda.

Why, he went on to Boston on the 4th of May, 1882, to interview Mr. Wm. H. Forbes, the President of the parent company, *on the sly*, and, like the society girl of the day, he took his topics of conversation along with him, and I don’t know of a juncture in this whole case which would be more likely to demand and call forth a written report than the result of this Gilsey House interview, if this Domestic story be true.

Now what does this report say?

It has not been produced ; its absence has not been explained, and the only fair surmise is, that the Domestic office-cat swallowed it just before this meeting of April 24, 1880.

But the Domestic Committee *did* make a report at that meeting. The minute says so. It is *immense*. They reported “progress.”

Does it not pass human credulity that a matter involving not only the prosperity, but even the life of the company after a limited period—if the Domestic story be true—should be presented in that form?

If this story be true, it was the most important transaction they had ever engaged in. Their original contract paled into insignificance by the side of it, and yet they allowed consideration of a telephone for a horse-car company, or for a hospital, and the sending of a delegate to a convention to overshadow their consideration of it, as the rising sun drives into obscurity the most insignificant star.

We read about the play of Hamlet with Hamlet left out; but here is indeed the striking illustration.

How does this report look from the standpoint of the defendants in this suit?

John D. Harrison had told them that it remained *for them* to adopt means to take up the Western Union plant, and Mr. Vail had written the same thing to them on April 10. Both had

warned them that it was *only a matter of dollars and cents* involved in the purchase of the Western Union plant, and Messrs. Vail, Dodd and Harrison, all testify that they were told distinctly at the Gilsey House that the subject of a renewal of their contract could not be considered, and Mr. Harrison testifies (p. 951, l. 9) that at this meeting of April 24, 1880, of the Domestic Company—for he was present there—the question of the renewal of the contract was not discussed. If this story of Mr. Harrison's be true, what was there to report but progress, and how precisely their subsequent action on this report and at this meeting clings to this theory.

"The Committee reported progress and was continued."

"Enos Runyon moved that said Committee be empowered to purchase the plant *at lowest price* that in their judgment they thought the property was worth."

"Seconded and carried, and adjourned at 10.30 P. M."

There was business for you.

Mr. Runyon is a keen business man.

He is one of the most successful brokers in Wall street.

It was at his motion that the Domestic Committee was appointed on April 9, *and directed to report back to the Board for consideration.*

He was too sharp to let them have too much rope.

He wanted to know what the scheme was before they got his sanction.

He had heard Mr. Harrison's statement at the meeting of April 9, that it remained for the Domestic Company to adopt means to take up the Western Union plant, and, with his Wall street shrewdness, he wanted to know *how much* means would be required, and so his motion directed his committee to report back to the Board for consideration.

Suppose they had reported back that on April 16, 1880, at the Gilsey House, in the city of New York, etc., as stated in the amendments to the bill, and upon the heels of such a report, Mr. Enos Runyon had moved that said Committee be empowered to purchase the plant at the lowest price that in their judgment they thought said property was worth, without a hint or mention of these important terms which Mr. Hubbell and the two Feareys say were submitted in their report of progress?

It is an insult to Mr. Runyon's intelligence and business shrewdness.

"The lowest price,"—that is the language of the minute,—a mere matter of dollars and cents.

Not the best terms, as Mr. Hubbell would have made it read,



if John D. Harrison's testimony that the question of a renewal was not discussed at that meeting, were not absolutely true.

Does it require any argument to induce this Court to believe, to induce any reasonable man with discriminating judgment to believe, that it would have been possible in the single hour between 9.30 P. M., and 10.30. P. M., for this Company to have settled all this important business of the horse-car and hospital telephones, the delegate to the convention and private line business, and to have discussed, as its importance demanded, the Gilsey House performance, if the Domestic story be true?

And before leaving this minute of April 24, 1880, I desire to call the attention of the Court a little closer to this report of this Committee. There is not very much of it, but what little there is tells the story in terms with whom this Domestic Committee went to New York to confer.

It says, "Committee appointed to confer with the *National Bell Telephone Company*,"—and not satisfied with that, it says, to make the thing emphatic and explicit and truthful, "the *National Bell Telephone Company of Boston*, relative to the "purchase of property of Newark Exchange. Committee reported progress and continued."

When that minute was written, no thought of litigation was with them, and the minute accurately and explicitly and truthfully sets forth their conduct on this occasion.

Mr. Hubbell says these Domestic minutes are true. In discussing one of them,—that of June 15, 1880,—he says (p. 150, l. 3): "It states exactly what occurred," and I apprehend that he will not be permitted to have one minute that suits his case state exactly what occurred, and another one, which don't suit his case at all, state exactly what occurred,—after it is corrected.

An attempt was made to have this minute corrected to suit the complainant's case.

It was damning against them as it stood.

They never dared to offer, and they never did offer it in evidence, and yet, if there was ever a report made as they were directed to make or an acceptance of any proposition made by anybody to purchase the Newark Western Union plant, that report was made at that meeting, and that acceptance was embodied in Mr. Enos Runyon's motion, which was carried, "that "said committee be empowered to purchase the plant at lowest "price that in their judgment they thought the property was "worth," and Mr. F. Fearey says (p. 385, l. 3) *this is the meeting* at which the Committee reported.

*Why was this important minute at which this Company took such an important step, at which they made the report they were directed to make, smothered out of this case, until it was wrung from them by a cross-examination?*

If their conduct has been so open and so honorable and so fair, *why did not such a minute as this which authorized this Committee to use just as much money as they saw fit, to get rid of the Western Union opposition, come to the surface at once in this case?*

*Ah, sir! shall we not scrutinize with care the testimony of witnesses who seek not only to impose upon the defendants to this suit, but upon the Court as well, by smothering the most important testimony which could possibly be offered in this case?*

Why, sir, during the taking of the testimony in this case, they accused us (p. 340, l. 34) of going fishing through their minutes.

Well, I don't know much about fishing, but it strikes me as good judgment to fish where you can get a good bite,—like this minute of our Domestic brethren, for example.

Mr. Hubbell, in his carefully prepared testimony given in this case, gave a "hop, skip and a jump" way over this minute, and over every other transaction that occurred after this Gilsey House interview, until he received a letter on May 20, from the Chairman of the Executive Committee of the New Metropolitan Company which had been formed.

He had very good reasons for taking that tremendous leap.

The minute of his Company, of April 24, intervened, and it was quite important to avoid that if possible.

Look at his testimony, beginning at line 20 on page 147, and see how anxious he was to keep off the shoals of April 24.

He says: "We had already been informed before that interview (the Gilsey House interview) by a letter from Theodore N. Vail that the new company so to be formed consolidated the interests of the Western Union and the Bell Telephone Company of New York," but he carefully refrained from saying that Mr. Vail also informed them in the same letter that the settlement did not apply to Newark. "We also knew before the interview that the gentlemen whom we met were to become officers of the new company, and the same was talked of, and they subsequently did become officers of that company as a matter of fact. We did not come to any definite conclusion at the Gilsey House as to whether we would buy this property or not, we were not empowered as a matter of fact to buy it; we were empowered to meet these gentle-

“men, hear their proposals, and carry them back to our board of directors. We heard their propositions as I have stated, and on the 20th of May following we got a letter from Mr. Joseph P. Davis.”

Just here Mr. Young saw the necessity of proving some report to his board, and interrupted Mr. Hubbell with the question, “Did you report to your board?”

Now, if there was any frankness or fairness in Mr. Hubbell, and if there was any truth in his story of the Gilsey House interview, here was his opportunity to state his report to his board, when, where and how.

See how skillfully he avoided and evaded Mr. Young’s question.

He answered, “We came back from that interview and reported to our board what we had done—what the proposition was. Now we received a letter from Mr. Davis on May 20, as follows:—&c.”

I suppose we are generously to believe that Mr. Hubbell forgot about his report and all else that transpired—important as it all was—between April 16 and May 20.

I have said that an attempt was made to have this minute corrected to suit the complainant’s case.

Mr. Frederick T. Fearey, with whom they had trouble more than once to get him to go the lengths necessary to sustain this case, was selected for that thankless office.

His attention was directed (p. 384, l. 35) by his own counsel to this minute of April 24, 1880—after we had successfully fished for and landed it high and dry—and this question was propounded to him (p. 385, l. 4):

“I see that this minute which I have just read” (with dismay, Mr. Young might have said) “speaks of a committee appointed to confer with the National Bell Telephone Company of Boston.”

And now, Mr. Fearey, seeing breakers ahead, thought to sail into smooth waters, and so he answered before the question went any further (p. 385, l. 7):

“The property had to be purchased from them through the various Companies.”

Now, Mr. Feary’s intent to evade this conundrum was so evident that it was simply cruel to follow him further, but his assertion was followed by an emphatic assertion (not a question) from his questioner as follows (p. 385, l. 9): “But this conversation referred to here is a conference with the Bell Telephone Company of New York.”

Now, there were only two ways for Mr. Fearey to escape from that bald statement. He must either give his case away, or say "yes." *He hesitated, and he who hesitates is lost*, and he meekly answered (p. 385, l. 11), "Yes, sir."

And then Mr. Young clinched the whole business by adding (p. 385, l. 12), "And in that respect I suppose the minute is not correct?"

And Mr. Hubbell heroically refrained from a personal attack upon Mr. Young for daring to correct his minutes "which state exactly what occurred."

Now, if my understanding of the rule of law is correct, one's own writings or declarations are never evidence in his favor, *but are taken most strongly against him*.

And what new rule of law is invoked by which these complainants, *who strangle this minute*, may, when it is developed against them, correct it to suit their own case and have it operate in their favor?

Still, perhaps Mr. Young had some little justification in indulging in this correction.

It will be remembered that it was upon his cross-examination that Mr. Harrison corrected the minute of April 9, that it was Mr. Vail who had asked for the committee and not the Bell Telephone Company of New York, and I suppose Mr. Young, to kind of get even with himself, thought he would have Mr. Fearey put this little matter back where it belonged.

It was a great relief when Mr. Young's disposition to correct the errors of his clients in this controversy began to wane. Suppose he had kept that up: before the end had been reached, Mr. McCarter and Gov. Bedle would have been gathered to their fathers and Mr. Young and I would have been the senior counsel in this case!

See where his corrections on this single branch of the case would have led him.

He must correct their minute of February 20, when Sheriff Harrison brought them the good news that the *National Bell* was to control.

He must correct the telegram of April 9 which was sent at the direction of the Domestic Company to Mr. Vail of the *National Bell of Boston*, as a very direct way of notifying the Board of the Bell of New York.

He must correct Mr. Vail's letter to the Domestic Company of April 10, in which he wrote them in his capacity of "*General Manager of the National Bell*."

He must correct the Domestic letter of April 14, to Mr. Vail,

written to him, as *General Manager of the National Bell*, in which they said they wanted to see him and nobody else.

He must correct the letter of April 20, 1880, which Mr. Vail wrote as *General Manager of the National Bell* to the Domestic, enclosing the Western Union statements of \$1034.38, in which Mr. Vail was so silent, or had already forgotten about the renewal, the reduction and the purchase.

He must correct the letter of April 23, 1880, which Mr. Vail wrote as *General Manager of the National Bell* to the Domestic, enclosing another communication from the Western Union, in which Mr. Vail maintained the same significant silence, but coyly told them he would be glad to hear from them upon *the whole matter* at their early convenience.

This is quite a formidable batch of mistakes to be corrected, all but one of them occurring within two weeks, and singularly enough *they all occurred on precisely the same subject*.

Inasmuch as no pretense of correcting them was made, I suppose by all ordinary rules of interpretation we may assume that they were not mistakes, *but the solid, substantial truth*, corresponding as they all do with the minute of April 24, 1880,—or, rather, as they all did before Mr. Young and Mr. Fearey put their heads together and corrected it.

They would have had less of a job if they had brought Mohammed to the mountain, by simply correcting the minute of April 9, to conform to the rest, *and to conform to the truth*, though, of course, it wouldn't have suited their case so well.

Now, the Domestic Committee was authorized to purchase this Western Union plant at the lowest price they thought the property was worth.

What did this Committee do?

Why, so anxious were they to get into the line of monopoly that they could not wait until next day, but they got together that very evening, after their Board had adjourned at 10.30 p. m., and wrote a letter in reply to Mr. Vail's coy request that they might be heard from upon *the whole matter* without delay.

Here was their opportunity to crush Mr. Vail for ignoring in his letters of April 20 and 23, the important bargain at the Gilsey House, of renewal, reduction, and purchase.

Here was their opportunity to retrieve their mistake in allowing the hilarities of the Gilsey House interview to prevent them from making a memorandum of its important results.

Here they could repair the disaster inflicted upon their report by their office-cat.

Mr. Vail had paved the way by inviting them to discuss the

*whole matter*, and now they would take their pen, and fasten the responsibility where it belonged.

They wrote as follows (p. 567):

“NEWARK, N. J., April 24, 1880.

“*Gents* :—We are in receipt of your favors of the 20th and 23d, with statements of the Western Union Company’s New-ark Exchange. We are unable to gather just the information we want.

“Will you please furnish us with a detailed statement of material, lines, fixtures, etc., *stating price and conditions of sale*. We desire to have full particulars about line privileges on the Western Union Company’s poles; also, when we can obtain possession. *We are ready to close the matter when presented in this shape*.

“Yours truly,

“(Signed) F. T. FEAREY,

“*Secretary*.

“*To National Bell Telephone Company, Boston, Mass.*”

Did you ever hear of such modesty on both sides?

Mr. Vail writing to them twice a week, and as an ice breaker in his last epistle, pleads with them to give their views “*upon the whole matter*,” and in reply they send this discreet, business communication, and make not the faintest allusion to renewal, reduction, or purchase at the end of five years.

I don’t recall in exactly which act Hamlet appears, but he has got to hurry around pretty quick if he gets into this play at all.

Perhaps it wasn’t modesty, though; perhaps it was forgetfulness.

And perhaps again, it was neither modesty nor forgetfulness.

And here I desire to call you Honor’s attention to the fact that Mr. Hubbell, in his direct testimony, skipped over this letter, with others, in his long leap from April 16 to the scalp of Joseph P. Davis on May 20.

But when Mr. Hubbell’s cross-examination was ended, our Domestic brethren saw that *the truth had got to come out* in this case, and they offered this letter in evidence on Mr. Fearey’s direct examination.

This letter is silent upon the subjects of renewal, reduction, and purchase which our Domestic friends say were the conditions agreed upon at the Gilsey House for the purchase of the Western Union plant, *but the letter gives the lie to the claim*

*that any such conditions had been agreed upon, for it asks for "a detailed statement of materials, lines, fixtures, etc., stating prices and conditions of sale," and says, "We are ready to close the matter when presented in this shape."*

What confidence can your Honor repose in the testimony of witnesses who will swear positively and distinctly to a bargain like this, and then expose their shame by offering in evidence a letter like this?

These Domestic brethren were ambitious.

They were anxious to be monopolists.

They couldn't sleep until this letter was written.

They were ready to close the matter when presented in the shape indicated in this letter, as soon as they knew the conditions of sale, and the shape didn't involve anything but to get the plant at the lowest possible figure.

When hampered by Mr. Runyon's restriction to report back to their board before making a bargain, the Domestic Committee condescended to correspond exclusively with General Manager Vail of the National Bell.

Now that they are relieved from this restriction and authorized by Mr. Runyon's motion to pay what they please for the plant, they disdainfully ignore poor Mr. Vail, and write this letter which they couldn't wait until morning to write, *directly to the "National Bell Telephone Company, Boston, Mass."*

There is a chance for another correction to enable that poor lonely minute of April 9, to pull through.

Why, sir, Mr. Young himself got so full of this conviction that these gentlemen went to meet a representative of the National Bell Telephone Company, that he framed one of his questions with reference to it (p. 198, l. 32).

And in calling Mr. Fearey's attention to this letter of April 24, 1880, he referred to it as a letter written to the New York Bell Telephone Company of Boston (p. 385, l. 30).

I don't mean to criticise Mr. Young. It's his client that ails him.

Why did they confine their correspondence to the National Bell of Boston?

They say in their amendment to the Bill that this wonderful bargain—which they afterwards forgot about—was made with the Bell Telephone Company of New York at the Gilsey House.

Where are the letters they received from and sent to that company?

Echo and the office-cat answer where?

Was ever a story so senseless, incredible, and absurd; so

ridiculous, flimsy and shameless, put forward as the basis of a serious litigation?

Now, it has been quite impossible to follow close at the heels of Mr. Hubbell in this case, because he forgets things.

He made no mention in his direct testimony of any of these important transactions between April 16 and May 20, and, of course, he forgot them; but it would hardly do on that account for us to pass them by.

He says that on May 20, the Chairman of the Executive Committee of the Metropolitan Telephone & Telegraph Company, which had been formed, and which he knew was to be formed before the Gilsey House interview (p. 147, l. 20), and which had succeeded to the rights of the Bell Telephone Company of New York, wrote to the Domestic Company a letter.

Now, that was very skillful in Mr. Hubbell to attempt to fasten the iniquities of the Bell of New York upon this new-born Metropolitan, but if he wanted to fasten upon anybody, it is respectfully suggested that in the light of all these minutes and correspondence, his attempt ought to have been made on the National Bell.

He didn't state that this Metropolitan Co. had succeeded also to the rights of the Western Union. He probably forgot that.

But he says Mr. Davis, the Chairman of the Metropolitan Executive Committee, wrote his Company a letter. It is as follows (p. 148):

"NEW YORK, May 20, 1880.

"FREDERICK T. FEAREY, Esq., Secretary Domestic Telephone Co.

"*Dear Sir:*—I am directed by the Executive Committee of the Company to inform you that we are prepared to turn over the Western Union Exchange at Newark upon the payment of the approximate cost, *viz.*, \$11,500—eleven thousand five hundred dollars.

"Yours truly,

"JOS. P. DAVIS,

"*Chairman Executive Committee.*"

That was a business letter. It is short and directly to the point, but it said all that Mr. Davis had to say at that time.

It didn't touch upon the subjects of renewal, reduction or purchase at the end of five years. For Mr. Davis didn't hear this Gilsey House bargain, and says (p. 834, l. 3) he never heard of it until the bill in this case was amended, so his fail-



ure to allude to the essentials of that bargain must be charged to his ignorance, rather than to his forgetfulness; but he *did* mention *the conditions of sale*, for which the Domestic heart panted in their letter to the National Bell of April 24.

Now Mr. Hubbell makes another single leap in his testimony from May 20 to a meeting of his Company, held on June 15.

Being somewhat short of stature, I must divide his single stride into two or three.

His Company held another meeting between these dates. We went fishing through their minutes and found it.

It is not of any very great importance except as showing again with whom they went to confer at the Gilsey House, and affording our friends on the other side another opportunity for another correction. The meeting occurs on May 26, and the minute says (p. 358):

“After talking matters over in reference to the purchase of this property, and as nothing definite would be done at present, and not until matters had assumed a more business-like shape, it was thought best to wait till we received further information from the *National Bell Company*.”

We offered that minute in evidence also.

About this time the name of the National Bell Telephone Co. was changed to the American Bell Telephone Co.

On June 14, 1880, Mr. Joseph P. Davis, the Chairman of the Executive Committee of the Metropolitan Telephone and Telegraph Company, wrote another letter to the Domestic Company.

It is a very important letter, and with your Honor's permission I will read it.

It is found on page 153, and is as follows:

“THE METROPOLITAN TELEPHONE AND TELEGRAPH COMPANY,  
“Executive Offices, Western Union Building.

“NEW YORK, June 14, 1880.

“DOMESTIC TELEGRAPH COMPANY of Newark, G. W. HUB-  
“BELL, President.

“*Dear Sir:*—In accordance with our understanding with you, “we enclose herewith orders of the Western Union Telegraph Company upon its agent for the transfer of the telephones “and exchange plant in use at or belonging to the telephone “exchange of that company at Newark, N. J. You are hereby “authorized to receive from the Western Union Telegraph “Company a receipt signed with our Company's name as

“Agent of the American Bell Telephone Company, you as our agent; but you will not receive nor receipt for any telephones which are broken, or in any way so damaged as not to be in good working order, which said telephones you will consider as delivered to you by us under our arrangement with you, and for them and the rentals thereof you will be responsible to us from the date of said receipt.

“Please examine the other property, and satisfy yourself that the property is the same as that you have agreed to purchase of us, and such as you will accept in discharge of the understanding between us for the sale of the property to you. If you are satisfied of the fact, please pay to us the amount in said order named, and deliver to the agent of the Western Union our check for the same sum, taking a receipt therefor from the Western Union Telegraph Company, which payment will be credited to you on account of the amount you are to pay us for the said property in pursuance to said understanding. The amount named and to be paid by you, you will understand is approximate, and subject to final ascertainment of the exact cost to the Western Union Telegraph Company of establishing said exchange, which said cost is to be established by exhibit of vouchers of the cost, and schedules of the property so transferred. These orders are endorsed to you upon the condition that by the acceptance thereof, you assume and agree to carry out the agreements or other obligations of such exchange with its subscribers and other parties, and further that you will consent to the assignment by the Bell Telephone Company of New York of its agreement dated August 6, 1879, with you, to the Metropolitan Telephone and Telegraph Company. As soon as these conditions are assented to by your Company, *it will be licensed* to use telephones heretofore furnished by the Gold & Stock Telegraph Company, and used in connection with the exchange of the Western Union in your territory.

“METROPOLITAN TELEPHONE AND TELEGRAPH CO.

“By JOS. P. DAVIS,

“*Chairman Executive Committee.*”

Now, there is not a suggestion anywhere in this testimony that up to that time, they had told Mr. Davis of the Gilsey House interview, or their version of the result of it, and there is not a word or expression in that letter that is not amply explained by the letter itself; and when Mr. Davis wrote that letter, he knew the terms upon which the Western Union had

agreed to retire under the contract of November 10, 1879, and he very clearly embodied those terms in his letter.

He knew also the conditions of the April 30th agreement, and bound the Domestic Company to its terms when he told them that "these orders are endorsed to you upon the condition that "by the acceptance thereof, you assume and agree to carry out "the agreements or other obligations of such exchange with its "subscribers *and other parties*, and further, that you will consent to the assignment by the Bell Telephone Company of "New York, of its agreement dated August 6, 1879, with you, "to the Metropolitan Telephone & Telegraph Company."

Mr. Davis's ignorance, and not his forgetfulness, will still excuse him for failing to mention the matter of renewal, reduction and purchase at the end of five years.

The influence of the Western Union in the Metropolitan Company is visible in that part of the letter which provides that the Domestic, by its acceptance of the plant, "shall carry out the "agreements or other obligations of such exchange with its subscribers *and other parties*."

They determined not only to have no isolated exchange on hand, but to have no lawsuits over their contracts, if human or corporation prudence could avert it.

Just another point about this letter of Mr. Davis's.

Messrs. Vail, Dodd and Harrison go further than Mr. Fred. Fearey in his declaration that it was stated at the Gilsey House that the new company might think a new contract the best way to have the Domestic Company assent to the assignment of their contract, and say that it was also stated at the Gilsey House that when the Domestic Company had acquired the Western Union plant, they would be licensed to use the Western Union instruments.

Our Domestic friends think this is so absurd that they are almost induced to be facetious about it. They come into Court and say, "Why, what do we want of the Western Union instruments? They are a poor, inferior set, and all we want of them "is to get them out as soon as possible and replace them with "the Bell."

Well, now, that may be true ; but it seems to me that although they might scorn to use one of them, yet it was worth something to hold a license which would exclude anybody else from using in their territory an instrument by which the Western Union had forced its way to the front "with amazing rapidity and success." *The control of a patent is oftentimes of infinitely more value than the use of it.*

Mr. Davis recognized the importance of this license being given to the Domestic Company, not for their use perhaps, but for their protection, when he wrote them in this letter of June 14, 1880, "As soon as these conditions are assented to by your Company, it will be licensed to use telephones heretofore furnished by the Gold & Stock Telegraph Company, and used in connection with the exchange of the Western Union in your territory."

Now, with this letter of June 14, 1880, before them, the Domestic Company met the following evening, but before discussing the action of that meeting, it seems discreet to revert for a moment again to the Gilsey House interview.

There are some things in that interview upon which all present were in harmony.

The counsel for the complainant seemed to extract considerable comfort in developing the fact that the purchase of the Western Union plant grew out of that interview.

I don't suppose any great violence would be done to our defense in this case if we should admit that, and we will admit some other things.

It will be conceded that Mr. Vail told them at that interview that they could have telephones for private lines in their territory, which right had been excluded from their amplified contract of August 6, 1879. When the telephone first came into use, it was supposed that a great private line business would spring up: that is, a line between a man's factory and his house not connected with a central exchange; or a line between two private houses, or, as its name suggests, any private line for private use.

In some cities these expectations have been fulfilled. Where warehouses and manufactories are located in one part of the city, and their salesrooms in another part of the same city, the private line business is profitable and valuable; but as the salesrooms of the Newark factories are mostly in New York City, the private line business of Newark did not prove to be of any value; and Mr. Vail was just as safe in conceding them the private line business, as he would have been in giving away his neighbor's blind and lame and sick dog without consulting with him about it.

Mr. Hubbell couldn't mention a single private line now in Newark, though his company has had a formal license for them since May 17, 1882 (p. 263, l. 27).

Again, Mr. Vail assured them, as they had been frequently assured before, that if the parent company ever made any reduction in the rental of telephones, that they would get the

benefit of it; that the rental of telephones was uniform everywhere.

Our Domestic brethren have never seemingly been able to understand why they should not have telephones at the net price paid by the New York Company, apparently forgetting that this little discount is all the compensation the New York Company gets for having surrendered this valuable territory to them for five years.

Your Honor will bear in mind that the parent Bell Telephone Company of Boston leased out this New York City Hall radius to the Bell of New York, and that they never had anything whatever to do with the Domestic Company in that transaction.

The parent company fixes a uniform price or rental for telephones, applicable everywhere, and they give the New York Company a commission or discount on these rentals; but if the Domestic notions about reduction could prevail, the New York Company wouldn't get anything out of them at all.

I tell you, they have grown to be monopolists with amazing assurance and with some success.

Although this subject of reduction in rentals was discussed at the Gilsey House, the Domestic Company didn't claim it as growing out of that interview. They claimed it from the time their license was executed, as will be shown later on.

They would get the benefit of a reduction in rentals if such reduction were made by the parent company whether such concession were ever made to them or not. The parent company would never allow any of its licensees to be put in better plights than they themselves were, or to reap a harvest that they could not share.

They were told at the Gilsey House interview by Mr. Vail (p. 551, l. 38), "that in order to withdraw the opposition and get an exclusive field, that it would be necessary to purchase the Western Union plant, and that the cost of the plant would be the cost to the Western Union Company; that there were certain items in that cost that were disputed, and if found to be incorrect, or found not to be properly chargeable to the cost of establishing the plant direct, they would be rebated, but that the approximate cost would have to be paid upon taking possession of the plant."

They were told (p. 553, l. 10), that it would be necessary to assent to the transfer of their license to the Metropolitan Company, about to be formed; and, as Fred. T. Fearey puts it, "that probably the best way to accomplish that would be by a new contract."

Now, this meeting of the Domestic Company on June 15, is so very important that your Honor will excuse me if I refer to another circumstance before discussing it.

During that day, June 15, Mr. Hubbell had been to New York and had an interview with Mr. Davis respecting the transfer of the Western Union plant.

That interview could not be better stated than by reading a letter which Mr. Davis wrote Mr. Vail the next day, respecting it. This letter was offered in evidence by the complainant, but what mysterious purpose they had in view in so doing is indeed a mystery. I guess they found out that the truth had got to come out in this case and temporarily lost their heads and offered things in evidence indiscriminately, but their old scheme of suppressing testimony manifested again later on.

This letter is found on page 1339, and is as follows:

NEW YORK, June 16, 1880.

“THEO. N. VAIL, Esq., General Manager Am. B. T. Co.

“*Dear Sir:*—In a conference I had yesterday with Mr. Hubbell, President of the Domestic Telegraph Company, he states that there was an agreement with you to include the right to lease for private lines in the contract signed by the Domestic and Bell Telephone Company, of New York, but that the provision was accidentally omitted. He also stated that it was the understanding that the Domestic was to have the benefit of any reduction in the rental of telephones which should be made to the Bell of New York by the National Bell. I should like to have from you the facts in regard to these two matters, as the Domestic wishes some provision in regard to them *embodied in the writings of the transfer* of Western Union Exchange property, or wishes them settled at this time. The Domestic also wishes some assurance in writing from the American Bell that as to the final adjustment of the cost of the exchange plant at Newark there shall be the same method of computing and ascertaining that cost that is employed in the case of the other exchanges to be transferred, and the same attention and zeal directed by the American Bell to reducing the cost as it bestows in the case of the other transfers.

“As the transfer is to be made in terms subject to the contract of November 10, Mr. Hubbell desires a copy of that contract, and also of that of April 30. I shall leave here to-morrow night, I think, for Boston.

“Yours respectfully,

“JOS. P. DAVIS.”

Now, sir, I insist that Mr. Hubbell and his Company never relied upon anything as bargained for at the Gilsey House interview. This letter offered by them distinctly shows that he relied for his claim for the private line right and the reduction of rentals *upon the original contract*. He says distinctly that the private line provision was accidentally omitted, and wanted it back again.

And he says it was the understanding that the Domestic should have the benefit of any reduction in rentals made to the *Bell of New York*.

Now, if his remarks had related to the Gilsey House interview, he would have said the *Metropolitan Company*, for the *Bell of New York* had gone out of existence.

He made no mention of the Hamlet of this business—the bargain for a renewal; or the ghost—the contract for a purchase whether or not at the end of five years.

No unprejudiced man can read that letter and not say that Geo. W. Hubbell never mentioned the Gilsey House interview at that interview with Davis.

He had forgotten all about it already.

Now, I hope your Honor is as interested in these transactions as I am; for I do not want to weary the Court, but these circumstances all need going into fully, for they fit together, to crush out this preposterous claim of the Domestic Company, like the cogs of two wheels.

How did Mr. Hubbell tell Mr. Davis at this interview of June 15, he wanted these provisions respecting the private line business and the reduction in rentals which had been promised by the Bell of New York secured to his company?

Did he tell him he wanted them embodied in the new contract which had been agreed upon or bargained for at the Gilsey House for an extension or renewal, and for a purchase at the end of their term?

No, he told him, as Davis writes to Vail, in this letter of June 16, which they have offered in evidence, that he wanted them embodied in the writings of the transfer of the Western Union Exchange property. And if there is any doubt about the meaning of that expression, Mr. Hubbell cleared it all up in the minutes of the meeting of his Company that very night.

Can any one believe that Mr. Hubbell at that interview with Mr. Davis mentioned these matters of private lines and the bargain with the Bell of New York about reduction and omitted the weightier matters of the renewal or the purchase at the end of the term, *if such weightier matters existed?*

Can any one believe that Mr. Davis would have omitted in this letter to Vail all mention of the bargain for a renewal or purchase at the end of the term if Mr. Hubbell had suggested these things to him?

There are just three ways out of this dilemma. Either,

1st. Mr. Hubbell through the same subtle charm or influence which he mysteriously exerted over Messrs. Vail, Dodd and Harrison to lead them into this loose bargain at the Gilsey House, silenced the tongue of Davis; or,

2d. He forgot all about mentioning it to Davis; or,

3d. *The bargain was never made.*

Again, they charge that Mr. Vail iniquitously assured them that they should be fairly dealt with.

We quite concur in that assurance. The only difficulty is that they strain the expression into meaning that their contract should be renewed; and that in addition to having secured this important territory without any burden except the payment of rentals, keeping their profits, and making no division of them, as other companies are compelled to make, that in addition to this they are entitled to the commissions on their rentals which the New York Company received, leaving the New York Company absolutely nothing out of this territory, over which they held an exclusive license from the parent company.

Verily, our Domestic brethren are a modest set.

Now, just once more before discussing their meeting of June 15, I beg to depart just a little from the chronological order of these events to read the reply Mr. Vail made to this letter which Mr. Davis wrote him on June 16, because these letters are very important and suggestive in the light of what occurred at the Domestic meeting of June 15, and of course your Honor will bear in mind that they were written without any possible knowledge of the action which the Domestic Company would take at that meeting.

He wrote two letters as an answer. Both are dated, "Boston, June 19, 1880," and they treat respectively of the two branches of Mr. Davis's letter. They are found on page 700, and are as follows:

"BOSTON, June 19, 1880.

"In reply to yours 16th inst.

No. 12094.

"THE METROPOLITAN TELEPHONE AND TELEGRAPH COMPANY  
"of New York, Jos. P. DAVIS, Esq., Chairman Executive  
"Committee.

"Dear Sir:—You can assure the Domestic Telephone Com-



“pany that in the final adjustment of the cost of the exchange  
 “plant at Newark, the same method of computing, and ascer-  
 “taining that cost will be employed as in the case of other ex-  
 “changes to be transferred; and any advantage obtained in re-  
 “spect of such computation at one place will be used to lessen the  
 “cost of the plant turned over to the Domestic Telephone Com-  
 “pany.

“One reason why I urged upon them a delay as to the final  
 “adjustment in price was that precedence might be established  
 “in the settlement now in progress, and far towards comple-  
 “tion, throughout the different sections of the country.

“Yours truly,

“THEO. N. VAIL, *Gen'l Manager.*”

“BOSTON, June 19, 1880.

“In reply to yours 16th inst.

No. 12094.

“THE METROPOLITAN TELEPHONE AND TELEGRAPH COMPANY,  
 “Western Union Building, New York. JOS. P. DAVIS, Esq.,  
 “Chairman Executive Committee.

“*Dear Sir:*—Yours 16th inst. re. Newark license received.

“There was an understanding with the Domestic Telephone  
 “Company that they should have the license for private  
 “lines, etc., during the continuance of the present term of their  
 “contract. It was not omitted accidentally but intentionally,  
 “with the full concurrence of the Domestic Company, it then  
 “being impossible to insert it, in view of the possible complica-  
 “tions it might make in the settlement for the territory occu-  
 “pied by the B. T. Co. of N. Y. with the G. and S. Tel. Co. It  
 “was omitted with the full assurance from that company that  
 “in case it was possible to do so, the Newark Company should  
 “have the license; I think they are justly entitled to it, and  
 “should have it.

“As regards the rental, my impression is that they are to pay  
 “the gross rental on telephones without discount. Of course  
 “this will vary with the variations in the rental of telephones.  
 “I am not positive about this, however, but the contract will  
 “probably throw some light on it. I should think that if they  
 “are to be subject to any increase in price for the different  
 “styles of instruments, they should have the benefit of any  
 “deduction in the present styles.

“Yours truly,

“THEO. N. VAIL, *Gen'l Manager.*”

No letters more friendly, fair and frank were ever written by any man upon any subject.

Now the Domestic Company met again on June 15, 1880, after they had received Mr. Davis's letter of May 20, telling them they could have the plant for \$11,500; after his letter to them of June 14, telling them of the red tape to be gone through with in the purchase, and warning them that by the acceptance of the plant, they assented to the assignment of their contract to the new Metropolitan Company, and assumed the contracts of the Western Union, and, also, after this interview with Mr. Hubbell in the afternoon.

This is the meeting whose minute Mr. Hubbell defended, and says, "States exactly what occurred" (p. 150 l. 3).

John D. Harrison was there. Though they had assigned him to the part of the sneak and the traitor, though he had attempted to get them into a snap at the Gilsey House, they still took him to their bosom and hugged him as their own.

The minute of this meeting is found on pages 214 and 215 of the printed case, and is as follows :

" NEWARK, N. J., June 15, 1880.

" Adjourned meeting from May 26, 1880.

" Present, Geo. W. Hubbell, John D. Harrison, Jabez Fearey, F. T. Fearey, E. Weston.

" Mr. Hubbell stated that he had been called (the committee) to New York on a letter signed by Mr. Jos. P. Davis, notifying us that they were prepared to transfer the property to us as scheduled to us, at all \$11,500.00, and that certain exceptions were taken to said letter, namely:

" 1st. *In assent of transfer* to cover following points in new contract.

" To include all private lines.

" 2d. To have benefit of reduction of rentals, to be the same as other companies.

" 3d. Arbitration of reduction of amount paid by Domestic Telegraph Company and how will we proceed to reduction.

" 4th. Some instrument must be drawn to give us the legal equitable title of the property and also schedule of property.

" 5th. What contracts of the Newark Western Union plant do we assume?

" After discussing the several points named and taking into consideration what verbal conversation the committee and members of the board have had from time to time with Mr.

“ Theo. N. Vail and Mr. Jos. P. Davis, in which they have  
 “ always stated that everything would be done for us that  
 “ would be done for any other exchange licensed by them, it  
 “ was the unanimous opinion of all present that it was best to  
 “ close the matter and trust to this mutual understanding for  
 “ future adjustment.

“ Resolved (Hubbell resolution), That the company raise the  
 “ sum of \$12,000.00, by discounting their note or notes, and the  
 “ president and treasurer are hereby authorized to sign and en-  
 “ dorse note or notes in behalf of the company for the purpose of  
 “ raising said money. Harrison second. Carried.

“ Resolution, Mr. Harrison.

“ Resolved, That the president and secretary be authorized  
 “ to purchase the property of the Western Union Company’s  
 “ telephone plant as scheduled, at rate, \$11,500.00, as soon as  
 “ practicable.

“ Seconded by Jabez Fearey and E. Weston in one voice and  
 “ carried unanimously.

“ After preparing note as above stated, making three at  
 “ \$4,000.00 each:

“ \$4,000.00, Mechanics’ National Bank.

“ \$4,000.00, Manufacturers’ National Bank.

“ \$4,000.00, National State Bank.

“ On motion, adjourned 11.59 P. M.

“ F. T. FEAREY,

“ *Secretary.*”

When Mr. Hubbell gave his carefully prepared testimony  
 in this case, he read this minute of June 15, with some running  
 comments, which made mighty interesting reading. The min-  
 ute and comments mixed, are found on page 150.

These comments were not carelessly made.

He says: “The minute is as follows:

“ NEWARK, N. J., June 15, 1880.

“ Adjourned meeting from May 26, 1880.

“ Present, Geo. W. Hubbell, John D. Harrison, Jabez Fearey,  
 “ F. T. Fearey, E. Weston.

“ Mr. Hubbell stated that we had been called (the committee)  
 “ to New York on a letter signed by Mr. Joseph P. Davis,  
 “ notifying us that they were prepared to transfer the property  
 “ to us as scheduled to us at \$11,500, and that certain exceptions  
 “ were taken to said letter, namely:

“(It would be better if that word exception had been observation, but still so it is.)

“1st. In *event of transfer* to cover following points in new “contract.”

This is the very first we find any documentary testimony in this case about a new contract ; and, as I have already stated, great stress is laid upon a new contract proposed between these companies: and what that contract was to be, and what its purpose was to be, and when and where it originated, is of the essence of this controversy.

Your Honor will recall Mr. Young’s unsuccessful struggle to elicit from Mr. Fred. T. Fearey a declaration to support Mr. Hubbell that no new contract was talked about at the Gilsey House which should be evidence of the *assent* of the Domestic Company to the *transfer* of their contract to the new Metropolitan Company, but Mr. Fearey insisted upon saying—and he used the exact language of this minute—that a new contract was talked about which should be evidence of the *assent of the transfer* of their contract to the new Metropolitan Company, and not, “in *event of transfer*” as Mr. Hubbell deliberately distorts it in his running comments.

So it does not lie in the mouth of this Domestic Company to say that the “new contract” here referred to contemplated in any way a renewal or purchase at the end of the term.

Even if these “following points” had included these important provisions, they would have no force or effect against either the Metropolitan Telephone & Telegraph Company, or the New York & New Jersey Telephone Company, the defendants in this suit, unless these “points” were brought to their notice, and acquiesced in by them.

Your Honor’s quick perception has already discovered that the Hamlet and the ghost of this play—the renewal or purchase at the end of five years—did not appear in *this* act or scene of June 15, 1880.

Now to resume reading Mr. Hubbell’s mixed minute and comments on page 150.

“To include all private lines (it had not been mentioned in our original contract, it had been covered by the verbal contract outside of our original contract, and we enjoy the privilege to a certain extent).

“By Defendants’ Counsel : We make the same objection to that statement.

"A. (Resuming reading from the minutes).

"2d. To have benefit of reduction of rentals—to be the same as other companies.

"3d. Arbitration of reduction of amount paid by Domestic Telegraph Company, and how will we proceed to reduction.

"In explanation of this matter allow me to say this, which is "a fact,"—I suppose Mr. Hubbell labeled this "a fact" in contradistinction of some of his statements which turned out to be founded on anything except facts—"that this exchange was "bought out at a gross price. We paid the sum of \$11,500 gross, "but the agreement was that if we could show an improper "charge in the cost of the Western Union Company's plant, "that that should be rebated to us and repaid, and the American "Bell Telephone Company undertook, in behalf of all its "licensees, to use a certain rule by which the cost of any particular plant—and there were others situated as we were, not "particularly the Western Union plant—could be ascertained "and the rules decided upon and formulated by them, and this "method of arbitration would result in a benefit to the Domestic "Telegraph & Telephone Company as well as in a benefit to "other companies; and I could go right on here and say that "as a matter of fact that was worked out, and \$800 or \$900 off of "the gross price of \$11,500 was saved through these methods "introduced by the parent company in behalf of all its children, "and that amount was returned to us, and that was the result "of the observation or exception made by us at that meeting, "to wit: arbitration of reduction of amount paid by Domestic "Telegraph Company, and how will we proceed to reduction.

"4th. Some instrument must be drawn to give us the legal "equitable title of the property, and also schedule of property."

There was the new contract mentioned at the head of this minute, in which these items were to be embodied—for he told Mr. Davis that very afternoon, as appears in Mr. Davis's letter to Mr. Vail which they offered in evidence, that "they "wished these items embodied in the writings of the transfer "of the Western Union Exchange property."

Again, to resume reading Mr. Hubbell's mixed minutes and comments (p. 151, l. 16):

"5th. What contract of the Newark Western Union plant do "we assume? We wanted to know what they were. *The whole "thing had gone along, as I might say, up to that time without "giving us any definite information of what we were buying or "of what we were doing.*"

Did you ever witness a piece of more sublime assurance than that?

They come into Court here, and solemnly amend their bill, stating clearly and distinctly an important bargain on April 16, 1880, at the Gilsey House, involving considerations which I need not repeat; they solemnly swear to the truth of this bargain in the affidavit appended to these amendments; and then Mr. Hubbell comes into Court, and just as solemnly swears "that the whole thing had gone along to June 15, without giving them any definite information of what they were buying or what they were doing."

Under ordinary circumstances that broad charity which ought always to be exercised towards the weaknesses of our fellow-men, would prompt us to say that that was a slip of the tongue, or that he had failed clearly to express his meaning; but Mr. Hubbell has closed the door against any such charity by the declaration that this minute states exactly what occurred.

Mr. Hubbell goes on to state in his running comments that "the minutes go on to say that the company after discussing the several points named, &c."

Now, the minute shows that they discussed these five points named, and they didn't discuss anything else, for Mr. Hubbell says "the minute states exactly what occurred."

They omitted all discussion of the renewal of their contract or the purchase at the end of their term.

If they hadn't already forgotten about them, these important considerations might be allowed to sleep; but the situation was about on a level with that described in *Tuckerman v. The Stephens & Condit Transportation Company* (3 Vroom, 326).

"As the winds arose and the danger increased, all hands went to sleep, and the barge, not to be behind the officers, as long as the winds blew, and the waves beat, got along excellently well, but as soon as the winds ceased, and the water became smooth, and the officers and crew woke up, she went down."

Now, the minute goes on to say that after discussing the several points named, and taking into consideration the contract made between our Committee and the properly authorized representatives of the Bell Telephone Company of New York, at the Gilsey House on April 16, 1880, it was the unanimous opinion of all present that it was best to close the matter at once.

Did I say the minute said that? I meant to say that that is precisely what the minute *would have said if there had been a shadow of truth in the statement*; but "this minute states exactly what occurred," that "after discussing the several

“ points named, and taking into consideration what *verbal conversations* the committee and members of the board have had “ from time to time with Theodore N. Vail and Joseph P. “ Davis ! ”

Where are Dodd and Harrison and the Bell committee?

Where is the contract at the Gilsey House with Messrs. Vail, Dodd, and Harrison?

Where is the committee of the Bell Telephone Company of New York, at which the contract upon which this suit rests, was made?

No! no! The Gilsey House interview not quite two months off, and the Dom. minute treats to a disquisition on verbal conversations with Theo. N. Vail and Jos. P. Davis!

Not even *promises* from these two gentlemen, much less bargains or agreements.

Merely verbal conversations!

Does the defendants' version of the Gilsey House interview need any stronger corroboration than that? that the Domestic Committee went to see Vail, and not any committee of any company?

Now if they had stopped just there, there might have been some chance for argument, at least that these verbal conversations with Mr. Vail and Mr. Davis related to the renewal of the contract or the purchase at the end of the term; but men—and perhaps corporations—are ordinarily honest when they have no motive for being otherwise; and without a thought of future litigation, these Domestic brethren in the very same paragraph say that these “ verbal conversations ” were—“ in which they “ have always stated that everything would be done for us that “ would be done for any other exchange licensed by them.” Which means, being interpreted by the Domestic lexicon, that they would renew their contract or buy them out at the end of their term. “ It was the unanimous opinion of all present “ that it was best to close the matter at once, &c.”

If our Domestic brethren would turn their ingenious minds to the compilation of a lexicon which would interpret every very bad case into a glorious success, they would make more money than they will out of this Domestic Telephone Exchange, if they continue the litigation much longer.

Now, the next step was Mr. Hubbell's resolution, found on page 151, and is as follows:

“ Resolved, That the Company raise the sum of \$12,000 by “ discounting their note or notes, and the President and Treasurer are hereby authorized to sign and endorse note or notes

“in behalf of the Company for the purpose of raising said “money.”

It was quite a wide latitude that which endowed the President and Treasurer with power to sign and endorse both.

I won't give away any secrets, but I know somebody else who endorsed these notes.

Then Mr. Harrison came to the front with his resolution that the President and Secretary be authorized to purchase the Western Union Company's telephone plant as scheduled at rate \$11,500, as soon as practicable.

Now, it would have been a little more orderly if Mr. Harrison's resolution to purchase had preceded Mr. Hubbell's resolution for power to replenish their depleted exchequer by getting their notes discounted; but the Domestic Company was hilarious that night, and they didn't stand much on the order of doing things, so long as they got things done, and so long as the minutes stated exactly what occurred, and besides Harrison is slow but sure, and Hubbell is quick and—not very sure.

That rich and powerful rival which “had pushed its way to “the front with amazing rapidity and success”; which compelled them to spend their money “lavishly in order to counteract and compete” with it, which obliged them to “put in telephones for nothing upon experimental use,” and which for ten months had kept them to a “nip and tuck” contest which had depleted their treasury, was about to retire from the field, and they were to be the sole surviving successors of this great corporation.

Who wouldn't have been inflated, and it smacks of cruelty to taunt them with tumbling over and ahead of each other with their motions and resolutions.

I humbly withdraw my remarks; but the withdrawal does not apply to their hilarity, for there is another word to be said about that.

*Mr. Harrison* offered this important resolution by which the President and Secretary were authorized to purchase the Western Union plant.

Did they stop to scan a resolution offered by a man on whom they had striven to put, and who, if their story be true, had accepted, the position of sneak and traitor, and who had tried to get them into the trap at the Gilsey House of purchasing the plant against the express prohibition of the Company?

Do they stop to consider that it was the corporate action of their Company *by the terms of which they would be bound*, and that it involved *no terms or conditions* except a simple carrying out



of Harrison's report to them on April 9, that it remained for them to adopt means to take up the Western Union plant; and that his present resolution embodied *nothing more than an appropriation of the means*—when raised—if they succeeded in getting their notes discounted—*to take up this plant?*

Men ordinarily watch quite narrowly the conduct of a man who is willing to sell himself or somebody else out, or get them into a snap if he can, and weigh his propositions with some care; but so elated were they over the prospect before them, that Mr. Jabez Fearey and Mr. Edward Weston, two gentlemen, who, by their evidence in this case, have shown their spleen against Mr. Harrison because he wouldn't be a sneak and a traitor, strove with each other as to which should be ahead in seconding his resolution, and, as the minute exactly states, *they seconded it in one voice.*

There are other cases in history where a lot of fellows have cried out with one voice.

And, after fixing up the notes, they with all the "ponderosity of particularity," adjourned at 11.59 P. M., as the minute exactly states.

Now Mr. Hubbell says that his Company purchased this Western Union plant and carried out the transaction in accordance with Mr. Davis's letter of June 14 (p. 154, l. 14); that the money had been previously arranged for by three banks discounting their notes (p. 304, l. 36)—with proper indorsements, I suppose—and that it was incumbent upon them to have corporate action on the subject of the notes (p. 304, l. 40); that the money was raised and paid in acceptance of the proposition that we *understood* was made at the Gilsey House (p. 154, l. 25). Well, I should think Mr. Hubbell would begin to say, "We understood," and look around for some bigger hole than that to crawl through!

Was not corporate action quite as essential upon any proposition which might be made to them for the purchase of this plant, as upon the question of their notes?

They indulged in corporate action quite freely, as your Honor will remember; and indeed they took corporate action twice in acceptance of General Manager Vail's proposition to purchase the Western Union plant.

1st. On April 24, when Mr. Runyon's motion prevailed that the Committee appointed to confer with the National Bell Telephone Company be empowered to purchase the plant at lowest price that in their judgment they thought the property was worth; and

2nd. On June 15, 1880, when Mr. Harrison's resolution prevailed that the President and Secretary be authorized to purchase the property of the Western Union Company's telephone plant as scheduled at rates \$11,500, as soon as practicable.

These corporate actions involve no considerations whatever except the payment of money.

They are the conduct and writings of the complainant.

They are not subject in law to any elucidation or explanation which will put them in a light more favorable for the complainant than they appear on their face.

They are to be construed most strongly against the complainant.

They are not subject to *any* explanation from the complainants, for Mr. Hubbell says they "state exactly what occurred."

Mr. Hubbell says (p. 301, l. 32) that on that same day, June 15, he wrote a letter to Mr. Vail. A press copy of the letter was produced without any signature to it, and Mr. Vail denies that that letter ever reached him, and no evidence was adduced to show that it was ever sent to him.

This letter is found on page 301, and is as follows:

"NEWARK, N. J., June 15, 1880.

"THEODORE N. VAIL, General Manager American Bell Telephone Company, Boston, Mass.

"*Dear Sir:*—We have closed matters, and take possession of "the Western Union Exchange in this city to-day. There are "various reasons why we should not feel satisfied with the "arrangements, some of which we have given to Mr. Jos. P. "Davis, to whom our Committee have given our views. In "this matter our board have considered what *conversations our* "*Committee have had with you and Mr. Jos. P. Davis* in reference to the several points named, and feel that you will do "for us in the future what we ask you to do at the present time.

"This step is taken to avoid any further delay, and we trust "will result to the mutual interest of all concerned.

"Yours truly,

"President."

And so we get another treat to "conversations" with Messrs. Vail and Davis, and Messrs. Dodd and Harrison and the Gilsey House bargain are lost sight of!

Mr. Hubbell says (p. 303, l. 5) that the last clause, "and feel "that you will do for us in the future what we ask you to do at

"the present time," refers to the agreements and promises made at the Gilsey House. Fred. Fearey says (p. 393, l. 13) that is not true; that it refers to the credits they hoped to get off the price paid for the Western Union plant.

Did Mr. Hubbell mean that clause referred to the agreements and promises of renewal and repurchase?

Of course not; for according to his own story the renewal and repurchase were not to occur until the end of their then present term, and he would hardly be so presumptuous as to ask General Manager Vail to buy them out at once—"at the present time"—and let them go on with the business besides.

Although I don't know but what he would!

Mr. Hubbell says (p. 155, l. 24): "We took possession of the Western Union plant and the opposition was extinguished. Up to that time we had made no money; it was a constant outgo."

And right here, may it please your Honor, let a single word be said respecting the motives which could actuate the Domestic or Bell of New York in purchasing the Western Union plant.

According to Mr. Young's theory, the Domestic Company could have no motive in buying the plant. He says it (the Western Union plant) was on its last legs, and the opposition was practically at an end.

Then why did they buy it at all?

Why did they *temporarily* even part with \$11,500 to silence an opposition that was practically at an end?

Mr. Young went just as far in his argument as he dared, to intimate that the Domestic Company, realizing then the infirmity of the eleventh clause of their contract, bought this plant with a view of curing that infirmity, but he hardly dared to go fully to that extent, for, as will be seen later on, they made their formal application for a renewal, based plumply, squarely, *and in terms* upon this same eleventh clause.

The Domestic motive, the motive which influences almost all of us in our human conduct, was signified in Mr. Hubbell's testimony which I have just quoted—to make money.

They knew that the consolidation had been effected everywhere—excepting within this thirty-three mile radius—and they knew that arrangements were making for a consolidation within this radius, excepting as to their Newark district.

They knew that the New York consolidation meant a consolidation of the New York interests of their Newark rival with the company from which they held their license, and that this rival was to have a heavy interest and influence in the consoli-

dated New York Company, with which they must afterwards deal.

They knew that by the terms of their own contract they had the right only to a mere local exchange, and that the privilege of intercommunication with the surrounding territory which had been accorded to them was liable to be withdrawn at any moment, and they knew that with the powerful influence the Western Union was to have in the new company, that when that withdrawal occurred, intercommunication with the surrounding territory would immediately be established *with the exchange of their rival*, which might continue to use its own telephones until the conflicting interests were harmonized, and that their own exchange would become a mere isolated exchange.

They knew that unless they purchased the plant, they must continue to expend their money in fighting off their powerful rival; that the rates of telephone must be kept at a begging figure—if, indeed, they were not put in for nothing upon experimental use; that the “nip and tuck” must continue, and that their last state would be worse than the first.

They knew that with the system they had adopted for telephone service, if they could secure the Western Union plant at its cost price, the purchase would not involve the sacrifice of a single dollar to them, for the system adopted by the Domestic Company, according to the testimony of Mr. Jabez Fearey, was (p. 1175-6) that of giving a separate and distinct wire from each subscriber to their central office.

The plan of the Western Union had been, according to Mr. Fearey's testimony, to start a wire out from the central office, and wherever they found a subscriber along the line of that wire, to tap the wire and make a connection with that subscriber, and in that way the Western Union sought to serve several subscribers by a single wire.

To transform the Western Union system into the Domestic system and serve the Western Union subscribers by the Domestic system would require every foot of wire purchased from the Western Union Company, and a large amount beside.

From that your Honor will see that no loss could possibly be entailed to the Domestic Company by the purchase of the Western Union plant at its cost price.

Suppose the Western Union Company for some reason had *voluntarily* retired from this Newark territory and left the field clear for the Domestic Company. Would not the Domestic Company forthwith, as a matter of business, have expended

their time, their energy, and their money to construct lines to reach the subscribers which the Western Union could no longer serve, owing to their voluntary retirement from the business; and could this have been accomplished by the Domestic Company for anything like the price they paid for the Western Union plant already constructed?

Or suppose the Western Union had been freed from the obligations of the contract of November 10, 1879, and had been at liberty to sell out their plant in Newark to whomsoever they saw fit, would the Domestic Company have hesitated a single moment to take it off their hands at its cost price if the opportunity had offered?

Ah! motives were not wanting on the part of this Domestic Company to purchase this plant with its five hundred and ten telephones in operation (p. 1110, l. 33) and their acquirement of it was the most sagacious act they ever performed.

They never could have acquired it except by the mature judgment of their adviser, and through the influence which was had with General Manager Vail by the man whom they nominated and elected to the delicate office of sneak and traitor, and who declined to accept their credentials.

And the rank and file of them come as witnesses in this case, and so anxious are they to give him a black eye because he would not play this double part, that they with one voice attack him before he has had an opportunity to tell his story.

His conduct and position are supported by every letter, minute and document in this case, and his standing in the light of the developments of this controversy is quite as respectable as any of his accusers'.

To use his own expressive language, "when they wanted to lean on him, he was as big as a mountain: when he wouldn't be their dog, he diminished to the size of the ant."

What motive had the Bell of New York in purchasing this plant, and what difference did it make to them whether the Domestic Company purchased it or not?

At the time of the Gilsey House interview, as the Domestic representatives knew, the interests of the Bell of New York were all bargained away. They were going out of business; their business was to be merged with the New York interests of the Domestic's rival.

Whatever interests they had would descend to and be absorbed by the new company, and what interest had that company in having the Domestic buy this plant?

The crime of urging the Domestic Company to buy the plant has not yet been charged against the Metropolitan Company, but the circumstance may have been forgotten, and we may yet have another Gilsey House interview, and another amendment of the bill, and we might as well meet the charge now as at any future time.

What interest had the Metropolitan Company in having the Domestic buy this plant? Its interests were decidedly in an opposite direction.

Suppose the plant had not been purchased by the Domestic, and the Metropolitan in the exercise of its rights—for it was certainly under no more obligation to the Domestic Company than the Bell of New York was—had maintained its intercommunication with the Domestic Company, and also established a rival intercommunication with the Western Union?

Such a rivalry would have kept down the price of telephones in Newark, made their use popular, and, with the increasing hold the instrument has taken upon all business enterprise, the number would have been vastly increased in this district, and no matter how they were put in by the Domestic Company—whether free or upon experimental use—the same rental—no more, no less—must be paid to the New York Company, whether the Domestic Company financially prospered under the circumstances or not.

But there was a company that was interested in having the opposition cease everywhere.

It had contracted to have the monopoly of the land under certain conditions, and we all know that a great corporation, striving after the absolute supremacy it had bargained for would not consider for one moment the advantages or disadvantages between two local corporations, nor even its own temporary minute profit.

That corporation was the National Bell Telephone Company, and Theodore N. Vail was its General Manager.

That corporation had a contract by which it could compel the Western Union, willing or unwilling, to loose its hold anywhere and everywhere by simply paying the cost price of its plant.

And this contract was good to the National Bell or its nominee, and in this case, it nominated the Domestic Company, and they met its General Manager, and bought the plant through him.

There was every reason why the National Bell Telephone Company should feel friendly towards the Domestic Company, and give it the chance of this bargain of purchasing the West-

ern Union plant at cost, and at the same time of silencing a powerful and overwhelming opposition, for the Domestic Company had fought manfully and zealously, but disastrously, for the Bell telephone during these months of rivalry.

Now, as has already been stated, money is the lever which largely controls human conduct, and absolutely controls corporate conduct; and will it be said that a bargain which involved so much as this alleged Gilsey House bargain involved, would have been based upon a sum which was left as indefinite as it could well be?

See what it involved.

This approximate cost of \$11,500 which the Domestic Company paid, was understood by everybody to be subject to reductions. These reductions might be much or they might be little, and Mr. Hubbell says, as has already been shown, that they actually did get \$800 or \$900 off of the \$11,500.

And Mr. Hubbell says further that his Company made a claim—in good faith—for a rebate of \$4,803.17 from the \$11,500 (p. 239 l. 5).

So they ask the Court to believe that with so great a motive as the Domestic Company had in purchasing this plant, the New York Company was willing to bargain with them for a renewal *without any definite consideration whatever*; that the amount of money to be paid was not a considered element, and that they might have this bargain for \$6,696.83, or for nothing, if by some process of figuring, they could entirely wipe out this approximate cost of \$11,500.

Now, men and corporations do not deal with any such loose estimate of money considerations, and there is no explanation of it in this case, unless Mr. Hubbell used his subtle charm and influence and absolutely mesmerized them.

The next step taken by either of these corporations, as developed in this case, is found in a minute of a meeting of the Domestic Company, held on June 23, 1880.

It states (p. 357) that the Treasurer reported that the Western Union plant had been purchased on terms previously agreed upon.

Our Domestic brethren will claim that this means the terms of renewal and purchase at the end of the term, though their minutes show that the terms were the lowest price they could get it at, which they subsequently fixed at \$11,500.

Mr. Harrison was there, and they still showed their confidence in him by adopting his suggestion (p. 357) to change their name

from the Domestic Telephone Company, to the Domestic Telegraph and Telephone Company.

Remarkable how they cling to such a character!

Now to return again for a short time to Mr. Hubbell.

He says, after stating that they had made no money up to the time of the Western Union purchase (p. 156 l. 4), "That in the early part of 1880, Mr. Harrison came to us in his capacity as director of the Metropolitan Company, and stated that the Metropolitan Company was willing to give us a new contract for the term of ten years, if we would apply for it, and we regarded it as being in accordance with the understanding at the Gilsey House."

Why, he had only a few moments before testified that the understanding at the Gilsey House was that they were to have a renewal of their contract *at the end of their term*, if the New York Company didn't desire to operate this district directly, or merged with some other district; and now he says that the understanding at the Gilsey House was that the New York Company would give them a new contract for ten years *at once*, if they would only be good enough to apply for it.

And he continued (p. 156 l. 21): "And we did make that application not only by letter which I have not been able to discover"—and he never discovered it—"but particularly by myself in person to Mr. Joseph P. Davis," who was the Chairman of the Executive Committee of the Metropolitan Company.

What purpose had Mr. Hubbell in giving this testimony?

He was about to offer in evidence certain of his own memoranda and letters to Mr. Davis in which he made no mention of these important items of the renewal and purchase, and it was absolutely essential to the salvation of his case that he should supply this omission by testifying to *verbal applications* for renewal to Mr. Davis, or by *imaginary letters* which he was not able to discover.

These letters (not the imaginary ones) were written and the memoranda made as early as June 15, 1880, and it was necessary that the verbal applications and the undiscovered letter to Mr. Davis should antedate June 15; so Mr. Hubbell says that in the early part of 1880, Mr. Harrison in his capacity as Director of the Metropolitan Company said that they could get a ten year contract merely by the asking.

Now let us for a few moments see what Mr. Hubbell says on this subject and how well he sticks to his story upon his cross-examination.



The following dialogue with him appears, beginning at top of page 240.

“Q. You stated in your direct examination that Mr. Harrison came to you, and said that the Metropolitan Telephone and Telegraph Company were willing to give you a new contract for the term of ten years if you would apply for it. When was it he said that to you?

“A. *Don't I state it there?*

“Q. Well, I asked you when it was?

“A. Well, I can't state without looking at my memorandum or looking over the records, *but whatever I have stated there was the result of an examination* on my part of the minutes and records of the Company.

“Q. Examination from what?

“A. *The minutes, records, letters and one thing and another.*

“Q. Produce anything now that will refresh you as to the time of this conversation.

“A. (To the Secretary.) Will you be kind enough to get that letter written by Mr. Harrison—commenced by him and finished partially by you, and partially by me?

“Q. You have no memory about it?

“A. I have no independent memory except from the result of my examination previous to my testimony given the other day.

“Q. When do you think it was?

“A. Well, it was not very long *after* the completion of the Western Union purchase. It was either in the fall of that year or the commencement of the next.

“Q. The fall of 1880, or the commencement of 1881?

“A. *1881, I should think, but whatever date I have given there on my direct examination is the date I fixed upon as the result of my examination upon the subject.*

“Q. Well, you have fixed it in your direct examination as the early part of 1880. What do you say as to that?

“A. *Then I wish to change it.*

“Q. Why do you wish to change it?

“A. *Because that is a mistake.* It was not my testimony, and that's the reason I want to change it. The transfer of the Western Union plant was made June 17, 1880, and *it was after that, that this new contract was negotiated.*

“Q. That was not my question. My question is when Mr. Harrison came to you, and told you, as you have stated, that the Metropolitan Company were willing to give your Company a new contract for the term of ten years if you would apply for it?

"A. Well, just wait till that letter comes in and I will fix the date exactly.

"( At this point the Secretary handed a letter to witness.)

"The letter that I introduced into my direct examination and which is marked exhibit 26, is dated the 11th day of January, 1881, and it was between that date and the transfer of the Western Union plant that this matter of the new contract was gone into.

(Defendants' Counsel: I object to that part of your answer as not responsive.)

"By the witness: Well, you are asking me to fix the date. (To the Master) What was my question? The Master read the question as follows: Q. My question is, when Mr. Harrison came to you and told you, as you have stated, that the Metropolitan Company were willing to give your Company a new contract for the term of ten years, if you would apply for it?

"Q. Well, now go on.

"A. Well, you interrupted me; do you wish me to go on about that letter?

"Q. Yes; answer my question as to how you fix the date.

"A. (To the Master) *What did I say there?*

"Q. I object to the Master reading what you have already said.

"A. Well, I want to know where I left off, *or else I shall have to repeat myself, perhaps.*

"Q. Well?

"A. This letter of January 11, 1881, marked Exhibit 26 was the joint production of John D. Harrison, Frederick T. Fearey and myself, and the original copy or draft appears in the handwriting of all three of us and it was composed before the 11th of January, 1881, and was the result of information imparted to us by Mr. John D. Harrison, that if we would apply for a contract it would be given to us for ten years.

"Q. Well, when did you fix the date?

"A. *Well, it was some time before January 11, 1881, probably in the fall of 1880, but active negotiations of course were commenced in the early part of 1881; that was when the thing got active as I understand it.*"

Now, that was Mr. Hubbell's story No. 2, respecting the time when Mr. Harrison came to his company in his capacity as Director of the Metropolitan Company and said the Domestic Company could have a new ten year contract merely by asking for it.

Now let us look at story No. 3 as detailed to Mr. Young on his re-direct examination, and found on page 312.

“Q. In your direct examination you say, ‘But in the early part  
 “‘of 1880, Mr. Harrison came to us in his capacity as director of  
 “‘the Metropolitan Telephone and Telegraph Company and  
 “‘stated that the Metropolitan Company were willing’—and  
 “‘so on. ‘H. stated that the Metropolitan Company were willing  
 “‘to give us a new contract for the term of ten years if we  
 “‘would apply for it. We regarded it as being in accordance  
 “‘with the understanding at the Gilsey House.’ And on your  
 “‘cross-examination appear the following questions and an-  
 “‘swers. ‘Q. You stated in your direct examination that Mr.  
 “‘Harrison came to you and said that the Metropolitan Tele-  
 “‘phone and Telegraph Company were willing to give you a  
 “‘new contract for the term of ten years if you would apply for  
 “‘it. When was it he stated that to you? A. Don’t I state it  
 “‘there? Q. Well, I ask you when it was. A. Well, I can’t  
 “‘state that without looking at my memorandum or over the  
 “‘records; but whatever I have stated there was the result of  
 “‘an examination on my part of the minutes and records of the  
 “‘Company,’ etc.—And then again occurs the following: ‘Q.  
 “‘Well, you have fixed it in your direct examination as in the  
 “‘early part of 1880. What do you say as to that? A. Then I  
 “‘wish to change it. Q. Why do you wish to change it? A.  
 “‘Because that is a mistake, it was not my testimony, and that  
 “‘is the reason I want to change it.’

“What do you say now as to that statement on your cross-examination?

“A. As to my desire to change it?

“Q. With reference to that part of your examination in which you spoke of a desire to change the testimony?

“A. My language when I said I wished to change it and when I said it was a mistake, was used because I had in mind the letter of January 11, 1881, and I think my testimony will show that before this question was asked me, I had requested the Secretary, Mr. Fearey, to go out and get that letter so that I might give the date of it, and get the original draft of the letter.

“Q. What letter?

“A. The letter of January 11, 1881, which was said to be composed by Mr. Harrison, Mr. Feary and myself, and my desire to change it was because I supposed that the question referred to the information received from Mr. Harrison upon which that letter was sent. In explanation I would say that

“there were several occasions upon which Mr. Harrison’s intimation was acted upon by me and my Company, and the information that he imparted upon which the letter of January 11, 1881, was composed and written was a different occasion from the one which I referred to in my direct testimony. In my direct testimony I referred to intimation, or information, or suggestion from Mr. Harrison with regard to the application, or the taking of active steps in securing a new contract, which was in the early part of 1880.

“Q. So that you say that your statement in the direct examination as to the early part of 1880, when Mr. Harrison informed your Company that the Metropolitan Company was willing to give you a new contract for the term of ten years was correct?

“A. *It was correct.*”

It would seem that Mr. Hubbell had also become something of a rover in this game, but he finally roved back to the statement that it was in the early part of 1880 that Mr. Harrison came in his capacity as director of the Metropolitan Company, and said that the Domestic Company could have a new ten year contract by merely applying for it.

His first correction, by itself, showed the extreme looseness of the statements made to uphold this tottering, palsied case.

This first correction destroyed the foundation laid for the personal applications for renewal made to Mr. Davis, and for the undiscovered letter, and Mr. Hubbell, seeing his unfortunate position, later on, in order to extricate himself as far as possible, made his second correction in direct contradiction of his former testimony, and finally fixed it as in the early part of 1880, when Mr. Harrison, who had temporarily roved into the Metropolitan Company, told him as a director of this latter company that he could have a ten year contract by asking for it.

It would be charitable to say that with the knowledge that the Metropolitan Company had no existence in the early part of 1880, and that the Gilsey House interview did not take place until the early part of 1880 was a thing of the past, that it was a slip of his tongue ; but he deliberately incorporated that very same statement in his testimony to lay a foundation for an unjustified construction upon certain letters he was about to introduce, and for certain other letters he had not been able to discover.

Now let us look for a moment at this subject of the “undiscovered letters,” by which Mr. Hubbell—as he says in his direct

testimony—made application for a renewal of his Company's contract.

On his cross-examination, beginning on page 244, line 19, the following occurs :

“Q. Was there any letter that you wrote to Mr. Davis that you have not produced here, or a copy that you have not produced here, making any such application?

“A. I find a letter of October 25, referring to the contract.

“Q. Let me see it. Don't lose sight of the form of my question.

“A. Well, I am trying to give you the information you desire. If there is any letter of that sort or kind I will find it, if you will give me time.

“Q. Suppose you commence along about May or June, and come back this way. Can you find a copy of the letter *July 14, 1880* ? If so, let us have that.

“A. Yes, sir, here it is.

“Q. Let me see it ; was this put in evidence?

“A. *I think it was; it was marked to go in evidence.*

“Q. Now have you anything before that? Just look, please.

“A. Well, perhaps you had better give me a date.

“Q. I can't give you a date.

“A. *If you have any letters there it would expedite matters.*

“Q. I haven't any.

“A. *I don't see any letter that refers to it.*

“Q. You stated in your direct examination that an application was made by letter which you hadn't been able to discover. You can't find any such letter?

“A. I think so still.

“Q. Well, you can't find any such copy?

“A. I haven't looked particularly for it since that time—except just now.

“Q. *Your search now has not resulted in finding anything?*

“A. *No, sir.*”

That was Mr. Hubbell's story No. 1 on the subject of “undiscovered letters,” and your Honor will bear in mind that in his voyage for discovery in his letter-book, he found a press copy of a letter of July 14, 1880, written to Mr. Davis, which Mr. Hubbell said was either in evidence, or marked to go in.

Near the close of the examination which I have read, and after his voyage through his letter-book was ended, he said, “*I*

*don't see any letter that refers to it,"* and at the close he said distinctly that his search had not resulted in finding anything.

Now, let us look at his story No. 2 on the same subject. It is found in his cross-examination by Mr. Young, on page 305, line 11 :

"Q. I refer now to your direct testimony, in which you say, referring to the application for a new contract for a term of ten years, as having been suggested by Mr. Harrison in the early part of 1880: 'The application was made not only by letter, which I haven't been able to discover, but particularly by myself in person to Mr. Joseph P. Davis, in the city of New York, at the office of the Metropolitan Company, and I not only made application, but I furnished him with a memorandum of certain things which I desired to have inserted in the contract if one were drawn'—the letter to which you refer in the testimony, have you been able to find it or not?"

"A. I have.

"Q. Will you produce it?"

"A. *It is the letter of July 14, 1880.*"

Mr. Hubbell says (p. 245, l. 24) that he never had any conversation with Mr. Davis respecting the new contract prior to July 16, 1880.

Now, Mr. Hubbell having had his attention directed on his cross-examination to this letter of July 14, 1880, and having sworn that *it was not* the undiscovered letter; and then again later on having had his attention directed on his re-direct examination to this same letter of July 14, 1880, and having sworn just as positively that *it was* the undiscovered letter, it may be as well now to read it to the Court, so that the Court may decide which—if either—of Mr. Hubbell's statements rests upon the solid pedestal of truth.

It is the next step in this drama, and is found on page 257, and is as follows :

"NEWARK, N. J., July 14, 1880.

"JOSEPH P. DAVIS, Esq., Chairman Executive Committee,

"M. Tel. & Tel. Co., New York.

"*Dear Sir:*—Before we purchased the Western Union telephone property from you in this city, you forwarded to Mr. T. N. Vail, Boston, a memoranda of items covering several points which were to be included in our new contract. Will you please let me know when the new paper will be ready? The company have their regular meeting on the 20th instant, and

"would be pleased to receive the same before that time. By giving this your early attention, you will confer a favor.

"Yours truly,

"GEORGE W. HUBBELL, *President.*"

Only the man who can say that John D. Harrison was a member of the Bell Telephone Committee after the Domestic Company had accepted him to act in concert with them, could have the amazing assurance to tell Court and counsel that this letter contained an application for a ten year contract.

Now, I desire to call the attention of the Court again to one of Mr. Hubbell's peculiar methods of giving testimony.

Following this statement respecting Mr. Harrison's conduct in the early part of 1880, and immediately after the introduction of Mr. Davis's letter of May 20, Mr. Hubbell gives another leap over and beyond the letter of July 14, 1880, which I have just read, and offers in evidence a letter of July 16 written in response to it.

Why did he do that?

This letter of July 16, which I will read later on, standing alone, might give some color by a lucid and far fetched explanation to this new ten year contract theory, *and that was precisely the effect Mr. Hubbell intended to produce.*

He had his press copy of his letter of July 14, 1880, which he says was the undiscovered letter! Why did he suppress that?

*Innocence never fears publicity.*

*A deceit or a trick may accomplish its heartless or dishonorable or despicable purpose, but in the end it is sure to recoil upon the deceiver with fury and vengeance, for "the mills of the gods grind slowly, but they grind exceedingly fine," and it behooves Mr. Hubbell when he comes into a court of conscience to come with clean hands and to keep nothing back, as did certain individuals mentioned in the fifth chapter of the Acts of the Apostles.*

He was so fair, and his Company had been so fair, and so imposed upon!

Why didn't this letter of July 14, 1880—this undiscovered letter by which they made an application for a ten year contract—come out at once, and "make things connect?"

*Simply because the reading of both letters would lay open the false impression he intended to create.*

Now, this "memorandum of items" mentioned in the letter of July 14, was given to Mr. Davis by Mr. Hubbell on the occasion of the interview between these gentlemen on June 15, and it is

quite important to ascertain just what this memorandum embraced.

Knowing Mr. Hubbell's extreme caution and care, knowing his readiness with his memoranda, and knowing how well he always equips himself either for a trip to Boston or to give his testimony, I trembled when he began to talk about producing this memorandum. It was a good thing I trembled then, otherwise I wouldn't have had a chance to tremble at all. It wasn't any great shakes after all, and I will read it for the benefit of the Court.

It is found on page 158, and is as follows:

*"In the license to be granted by the Metropolitan Telephone and Telegraph Company to the Domestic Telegraph Company of Newark, the latter company would like to have the following points covered:*

*"First. Control over all private lines in their district.*

*"Second. To have the benefit of any reduction of rentals of  
"telephones that may be made to any other com-  
"pany.*

*"Third. An agreement that the Domestic Telegraph Com-  
"pany of Newark shall have the same right and the  
"same opportunity of obtaining a reduction and  
"a rebate from the sum of \$11,500, paid as the ap-  
"proximate cost, the same as the Metropolitan  
"Company expects to receive from exchanges where  
"they have purchased directly."*

This memorandum is important in these things:

It is important (1st) in the continued manifestations of silence—if I may use such an expression—on the part of Mr. Hubbell, respecting the very essentials of the alleged Gilsey House bargain—the renewal and the purchase.

And it is important (2d) in bearing out Mr. Davis's version of the interview with Mr. Hubbell on June 15, as contained in his letter to Mr. Vail on the next day.

These three items, and only these three, of private lines, rentals and adjustment of the cost of the Western Union plant, were embraced in both papers, and it is not within the bounds of possibility that both documents would have omitted the weightier matters of the renewal and purchase, if they had been ever mentioned between these two gentlemen.

This memorandum is important (3d) in bearing out the testimony of Messrs. Vail, Dodd, and Harrison, that they were told



at the Gilsey House that they would be licensed to use the Western Union patents, though they now scoff at the idea! For the memorandum says, "In the *license* to be granted by the Metropolitan to the Domestic."

What license? Why,—not the license to use the Bell telephone! They had that already!

What license—but the license to use the Western Union instruments!

This memorandum is important (4th) because it shows that none of the three points mentioned in it had ever been *agreed* upon.

It says, "*We would like* to have the following points covered."

That is not the way men speak of *rights which have been contracted to them*. Children might stumble into such an expression, but business men never.

Mr. Hubbell says in his testimony (p. 157, l. 29) that this memorandum was a statement of the articles he wished inserted in the new contract,—not a portion of them;—and he says further (p. 156, l. 40), that he gave the original of this memorandum to Mr. Davis to be passed on to Boston, where the new contract was to be prepared, and that (p. 158, l. 17), "the original was sent to the National Bell Company at Boston by Davis, and an endorsement was put upon it at the time it was delivered and sent there, which endorsement I also offer in evidence."

The endorsement turned out to be as follows:

"This was sent to the National Bell Company of Boston by Mr. Joseph P. Davis, Esq."

This was very ingenious of Mr. Hubbell.

He meant to convey the idea—at least at the time I understood him to convey the idea, and so did Mr. McCarter (p. 247, l. 10,)—that this endorsement was put upon it by Mr. Davis; but by virtue of the fishing qualities of Governor Bedle, it was ascertained that the endorsement was put upon it by Mr. Frederick T. Fearey.

Mr. Davis embraced all the points contained in that memorandum in his letter of June 16, 1880, to Mr. Vail, and consequently did not encumber the United States mail service with Mr. Hubbell's memorandum which "strained at a gnat and swallowed a camel."

Perhaps it may be said—(I don't know whether it will be, but they have got to say a great deal to make this case hold water)—that it was not necessary to include in the memorandum of items for the new contract which Mr. Davis was to send on to

Boston, the points of renewal and purchase, because Mr. Vail knew of them already ; but, if the Domestic story is true, Mr. Vail knew quite as well of the items of private lines, reduction in rentals, and the rebate from the cost of the Western Union plant ; for all these matters were discussed at the Gilsey House interview, so there does not seem to be any real strong reason why a discrimination should be made in this memorandum of comparatively unimportant items which Mr. Hubbell must have had prepared at great expense.

Mr. Davis answered Mr. Hubbell's letter on July 16.

It is found on page 157, and is as follows:

"NEW YORK, July 16, 1880.

"GEO. W. HUBBELL, ESQ., Prest. Dom. Tel. Co.

"*Dear Sir:*—Your favor of the 14th instant referring to our inquiries forwarded to Mr. Vail, and to a proposed new contract, received, and contents noted. There is not a quorum of our Executive Committee in the city, and there will consequently be no meeting before the 20th of the month. At its first meeting I will bring up the subject which you suggest.

"Yours respectfully,

"JOS. P. DAVIS,

"Chairman Executive Committee."

That was evidently the first thing Mr. Davis had heard about a new contract.

When he wrote Mr. Vail on June 16, his understanding was—and this understanding was based upon his interview with Mr. Hubbell of the day previous—he had no other source of information—that these points Mr. Hubbell desired to have covered were to be embodied in the writings of the transfer of the Western Union Exchange property.

Remember Mr. Davis knew nothing of the Gilsey House interview, and knew nothing of the suggestion which Mr. Fred. T. Fearey says was made there, that the new company might want to draw up a new contract by which the Domestic Company should assent to the transfer of their license to the new company.

Mr. Davis had already acted upon an easier and more expeditious way of accomplishing that object when he wrote the Domestic Company, on June 14, that by their acceptance of the Western Union plant, they would consent to the assignment of their agreement to the new company.

Mr. Davis courteously told them that there would be no meet-

ing of the Executive Committee of his Company before the 20th, but when they did meet, he would bring up this subject of a new contract which Mr. Hubbell had suggested.

Now I think the testimony in this case shows that Mr. Davis never brought any of the subject except the private line business to the attention of his committee and it does strike me that there was nothing very criminal about that. He was a man of judgment. He occupied a position where judgment must be exercised and I can't conceive that he was bound to present every petition or request made to him to his Company or to his Executive Committee.

The items they had given him for the new contract were not of absorbing importance even to the Domestic Company, and I have no doubt Mr. Davis had his hands full of the affairs of his own company.

The private line subject was brought before his Executive Committee on July 20, and (p. 827, l. 39) they "voted that a new contract with the Domestic Telegraph Company of Newark, N. J., covering private lines be drawn up and submitted to this committee for approval."

Mr. Davis undertook to draw up this private line contract. His effort will be found on page 1367.

I need not read it.

For some reason or other, it was never presented to the Executive Committee for action—perhaps it was more voluminous than the business it sought to provide for—and on May 17, 1882, the Metropolitan Company wrote the Domestic Company a letter which gave them the private line business.

It is found on page 585, and is as follows:

" NEW YORK, May 17, 1882.

" DOMESTIC TELEGRAPH AND TELEPHONE COMPANY, Newark,  
" N. J.

" *Dear Sir:*—By vote of the Executive Committee of this  
" Company you are licensed to put out telephones on private  
" lines which are wholly within your territory described in the  
" contract of August 6, 1879. The license is to continue *until*  
" *the end of the term of five years mentioned in that contract,*  
" *i. e., to the last day of August, 1884.* The telephones which  
" you are to put out on such lines are to be those furnished you  
" by this Company, and the rentals thereof are to paid by you  
" to this Company in the manner and at the rates provided in  
" said contract. The form of contract which you will use for

"private line purposes is to be such as is approved by this Company. If you print blanks, please submit proof to us first.

"Yours truly,

"MET. TEL. & TEL. CO., by

"THEO. N. VAIL,

"*President.*"

It will be perceived that Mr. Vail didn't sign this as General Manager from force of habit. He was now acting for the Metropolitan Company.

Now, I don't look upon Mr. Vail's letter of any great consequence in giving the private line business to the Domestic, for, as far as I can ascertain and as has already been shown, the private line business in Newark is of very little consequence.

But Mr. Vail's letter is of consequence in that it is very specific in providing that the private line license was to continue no longer than to the end of their contract, i. e., "to the last day of August, 1884."

The most of men would have said until the first day of September; but Mr. Vail was careful. He knew the Domestic contract expired on the last day of August, and he said so.

He evidently had no idea floating in his mind that the Domestic Company had any contract which could by any possibility carry them past that date.

The next thing that occurred on the subject of a new contract were two unimportant letters which passed between the Domestic and Metropolitan Companies, found on page 307, which I will read to make the history complete.

"NEWARK, N. J., August 13, 1880.

"JOS. P. DAVIS, Esq., Chairman Executive Committee, M. T.

"and T. Co.

"*Dear Sir:*—If you can conveniently send in the new form of contract by Wednesday 18th, so that I can submit same at regular meeting 20th, would be very much obliged.

"Respectfully,

"F. T. FEAREY, *Sec. and Treas.*"

"NEW YORK, August 14, 1880.

"DOMESTIC TELEGRAPH CO., F. T. FEARY, *Sec. and Treas.*

"*Dear Sir:*—Mr. Davis, Chairman of the Executive Committee of the Met. T. and T. Co., is away upon his vacation. Upon his return, which I expect Monday or Tuesday next, I

"will hand him your letter of 13th inst. and previous letter as  
 "to tolls, etc.

"Yours respectfully,

"CHAS. S. GAGE."

Mr. Davis got back from his vacation and wrote the Domestic a letter on August 8, which I will read from page 308.

"NEW YORK, Aug. 18, 1880.

"F. T. FEAREY, Esq., Sec'y and Treas. D. T. and T. Co.

"*Dear Sir:*—I have just returned from my vacation, and I  
 "find so many things needing immediate attention that I shall  
 "not be able to attend to the matter of your communication of  
 "the 13th inst., in season for your meeting to be held on the  
 "20th inst.

"Yours respectfully,

"JOS. P. DAVIS,

"*Chairman of the Executive Committee.*"

We next hear of the new contract in a letter written by the Domestic to the Metropolitan on Sept. 22, 1880, found on page 579, as follows:

"JOSEPH P. DAVIS, Esq., Acting President, Metropolitan Telephone and Telegraph Company, New York.

"*Dear Sir:*—We have a number of applications from the suburban towns of Irvington, Belleville, Caldwell, Bloomfield and Montclair, who desire to have direct communication by telephone with the exchange of this Company.

"If the privilege can be granted us to connect the above named places with our exchange, will you please have it so stated in our new contract, which you are getting in shape for us.

Yours truly,

"F. T. FEAREY, *Sec'y and Treas.*"

Your Honor will see that by this letter our Domestic brethren were getting decidedly ambitious.

They now proposed to take in at one full swoop the most of Essex County. They were perhaps then laying their plans to operate this Newark district merged with all the surrounding country, which adjoined them on every side, and we may have to combat an amendment embracing that before we get through, providing Mr. Hubbell don't forget it.

Mr. Davis was no doubt astonished to get this letter—that is, at that time he felt astonished, although at the present time

he wouldn't be astonished at anything they did—and he answered rather sarcastically on September 24 (p. 159, l. 17):  
 “We had not considered the subject of an extension of your territory, but do not at present think we shall insert such a provision in the contract.”

When Mr. Hubbell followed the reading of this letter with the remark (p. 159, l. 35) that “he only introduced it to show that we have made an application for an extension of territory, *as well as for other things* in the new contract,” his own counsel looked astonished, and exclaimed (p. 159, l. 40),

“Extension of territory!”

The next step was at a meeting of the Domestic Company on October 25, when their minute shows (p. 354, l. 40) that the subject of

“Our new contract,

“Tolls,

“Applications from suburban towns and reduction in royalties paid on instruments, was left in hand of President and Secretary, who were instructed to call and see Mr. Jos. P. Davis of the New York Company, and have a better understanding of our position on these matters.”

Now, this was quite a batch of uncertain things—the new contract among the rest—turned over to the President and Secretary.

I have no doubt that, as Mr. Hubbell says, things had gone along even up to this time, without any definite idea of what they were doing; at least, no very definite idea can be gleaned from this minute.

That night, after the meeting of their Company, Mr. Fearey and Mr. Hubbell put their heads together and wrote Mr. Davis another letter, asking when they could call and see him in reference to their new contract, and Mr. Davis wrote them on the 26th, the next day, that he would see them to-morrow—Wednesday—morning, if convenient for them.

These letters are found on page 309, and are as follows:

“NEWARK, N. J., Oct. 25, 1880.

“JOS. P. DAVIS, ESQ., Acting President M. T. & T. Co., New York.

“*Dear Sir:*—Will you kindly appoint a time some day this week, when Mr. Hubbell and myself may call and see you in reference to our contract,

“Obliging, yours truly,

“F. T. FEAREY, *Secretary and Treasurer.*”

"NEW YORK, Oct. 26, 1880.

"F. T. FEAREY, Esq., Sec'y and Treas. D. T. & T. Co.

"*Dear Sir:*—Yours of the 25th inst. received. I will see you  
"and Mr. Hubbell to-morrow—Wednesday—morning if con-  
"venient for you.

"Yours truly,

"JOS. P. DAVIS,

"*Acting President.*"

These three gentlemen—Messrs. Hubbell, Fearey, and Davis—met on the morning of the 27th of October, 1880, to talk over this new contract.

Mr. Hubbell was asked on his re-direct examination by Mr. Young (p. 310, l. 10)—

"Q. Have you any recollection that this conversation referred to, or provided for in these letters, was had?

"A. Yes, sir.

"Q. Now, what was the subject of the conversation?

"A. The subject matter of the conversation was the consideration of a new contract—the same referred to in the various correspondence."

Now, I have produced and read to the Court every minute, every memorandum, and every correspondence in this whole business from its beginning to this interview of October 27, 1880, and I defy anybody to point to a word anywhere which can, by a strained construction, refer to a bargain for renewal or purchase at the end of the term.

So that our Domestic brethren had not up to and including October 27, 1880, informed Mr. Davis of these important provisions; for Mr. Hubbell says the new contract talked about was "the same referred to in the various correspondence."

Now they came back from this interview, and the next day they wrote a letter to Mr. Davis, which shows what the burden of their grievance was at the interview, and that it was not the subject of a renewal of their contract or the purchase at the end of the term. They had been told so distinctly at the Gilsey House that the renewal of their contract could not be considered, that they had not even thought of such a thing!

I will read this letter, found on p. 274.

"NEWARK, N. J., Oct. 28, 1881.

"JOS. P. DAVIS, Esq., Acting President M. T. & T. Co., New  
"York.

"*Dear Sir:—When the contract was made between the Domestic Telegraph Company, Newark, and the Bell Telephone Company of New York, it was understood that a discount of twenty per cent. on the gross rentals of ten dollars per instrument per annum, was to be retained by the Bell Telephone company of New York, in granting us the license for the Newark territory, and if any further reductions were made we would have the benefit. As the discount allowed at the present time amounts to fifty per cent., this company feels that they are entitled to the difference of thirty per cent., having had this understanding at the time the license was executed.* By giving this matter your early consideration, you will oblige,  
Yours truly,

"F. T. FEAREY,

"*Secretary and Treasurer.*"

I have already asserted that nothing whatever was agreed upon at the Gilsey House except that the Domestic might have the chance to buy the Western Union plant at its cost price, if they saw fit to do so; and that this question of the reduction of rentals which was discussed at the Gilsey House, had its origin in the mind of the Domestic Company at the time the original contract was executed.

And this letter is an ample justification of that assertion.

Why didn't they indignantly call Mr. Davis's attention to the fact that the Company of which his company was the successor, had bargained for these things at the Gilsey House, and that they proposed to stand on their strict legal rights and have them?

*Simply, because there was no such fact to call his attention to.*

Now, our Domestic friends went on making money with their monopoly, no doubt, but they subsided on this question of a new contract until November 23, 1880, when they wrote the following letter to Mr. Davis, found on page 161:

"November 23, 1880.

"JOS. P. DAVIS, Esq., Acting President M. T. & T. Co., New  
"York.

"*Dear Sir:—The annual meeting of directors of this Company occurs early in December, and I hope that the contract*



"which is being prepared will be ready to submit to our directors by the first of December.

"If you will have it reach us by that time you will confer a favor.

"Respectfully,

"F. T. FEAREY,

"*Sec'y and Treas.*"

On the same day Mr. Hubbell wrote another letter to Mr. Gage, who was connected with the Metropolitan Company, asking about the part of the November 10, 1879, contract which relates to poles and fixtures, which Mr. Gage answered on November 27. These letters are not of any great importance, but I will read them to make the story complete. They are found on page 163, and are as follows:

"NEWARK, N. J., 11, 23, '80.

"Mr. GAGE, M. T. & T. Co., New York.

"*Dear Sir*:—Will you kindly inform me about that part of the contract of November 10, '79, between the Western Union and American Bell Tel. Co. that relates to poles and fixtures?

"I address you supposing that Mr. Jos. P. Davis is away, thinking you might give me a prompt answer, for which I would be obliged.

"Yours truly,

"G. W. HUBBELL, *Pres't.*"

"NEW YORK, Nov. 27, 1880.

"GEORGE W. HUBBELL, Pres't D. T. and T. Co.

"*Dear Sir*:—For the reason that Mr. Davis was away I have not answered your favor of the date of the 23d of Nov. before. The provision in the contract on the subject you refer to is to the general effect that the W. U. will, when it does not interfere with its enjoyment and use for telegraph purposes of poles and fixtures, allow the Am. Bell to use them on reasonable terms, subject to revocation on reasonable notice. This Company has been unable to obtain any benefit from the provision. You will please consider this letter confidential, and if you should in the future desire to be further informed in regard to the provisions of the contract between the W. U. and Am. Bell, please direct your inquiries to the latter company.

"Yours respectfully,

"CHARLES S. GAGE.

"P. S.—In reference to our contract, we have again urged  
 "the Am. Bell to hasten in the matter and forwarded to them  
 "your last letter. It is doubtful if the contract will be ready  
 "for the meeting of your directors. C. S. G."

There were apparently some confidential relations between Mr. Hubbell and Mr. Gage, and they had gone into partnership on this new contract, for Mr. Gage speaks of it as *our* contract.

The postscript of this letter was undoubtedly intended as a reply to the Domestic letter of November 23, written to Mr. Davis. It answered the inquiry contained in that letter, and no other answer to it came to the surface in this case.

Mr. Hubbell says (p. 163, l. 21) he offered these Gage letters in evidence, not because of any particular bearing on this case, but "in order to make it connect."

He had suddenly become conscientious.

After going through these correspondence and minutes with a discriminating hand and selecting here and there one which by no possible construction but by a very strained explanation could be made to give some color to his case, and just as discriminatingly omitting letters and minutes by the bushel which undermined him, he suddenly conceives the necessity of making things connect.

Well, there is a wide field before him.

The street in Jerusalem in which he dwelt was very dirty.

Nothing more now until December 14, 1880, when the Domestic Company met.

The minute shows (p. 354, l. 6) that "The committee appointed to look after our new contract and various other matters relating thereto, reported progress. Considerable discussion took place in reference to the delay of the New York Company in not sending us a new contract.

"The President and Secretary who composed said Committee stated that they were doing all that could be done to hurry the matter along, and that the papers which included parts of the contract between the New York and Boston Companies were being arranged, and that the matter would reach us very shortly."

They met again on December 30, and their minute shows (p. 353, l. 18) "that President and Secretary, committee on new contract, could only report progress, as the question of reduction in rentals and other matters were under consideration, and had not been decided upon."

On January 7, 1881, the Domestic Company wrote to the

Metropolitan, asking permission to connect the Newark City Home at Verona, outside of their exchange, with their central office, and on March 5, 1881, they made a similar request for the privilege of connecting with three subscribers at Belleville, also outside of their territory.

These letters are found on pages 1096 and 1097, and are respectively as follows:

“NEWARK, N. J., Jan. 7, 1881.

“METROPOLITAN TELEPHONE AND TELEGRAPH CO., New York.

“*Gents*:—The board of managers of the City Home at Verona have requested us to remove the telephones at the Home, and want new instruments in their place, to be connected with this Company’s exchange.

“The present arrangement has been unsatisfactory, and they recognized the necessity for the central office connection. Have you any objection to the change being made?

“Respectfully,

“JABEZ FEAREY, *Sup’t.*”

“NEWARK, N. J., March 5, 1881.

“METROPOLITAN TEL. & TEL. CO., New York.

“*Gentlemen*:—We submit the names of three parties in Belleville, N. J., who desire to have direct communication with this Company’s exchange: John Eastwood, DeWitt Wire Works, and Belleville Water Works.

“Will you kindly grant us permission to make the connection? The places are about one mile out of our territory.

“Yours respectfully,

“F. T. FEAREY,

“*Secretary and Treasurer.*”

Apparently not having caught on to Mr. Davis’s sarcastic letter a short time previous, when they asked to take in the most of Essex county, Mr. Davis made no reply to these two communications, but put these letters in evidence in this case, to show what a modest, unassuming set of fellows they were.

Now come down to January 11, 1881, which date our Domestic brethren deem an important date in this controversy.

From the date of the Gilsey House interview of April 18, 1880, to January 11, 1881, there passed between these two companies no less than fifty-two letters, eight receipts, and three memoranda, which are in evidence in this case, and no doubt a great many more which are not in evidence.

Between these dates there were meetings of the Domestic Company, the minutes of eight of which are evidence here.

In all this mass of testimony which by itself would make a volume, there is not a word which by a strained interpretation refers to the Hamlet or the ghost—any bargain for a renewal of the Domestic contract or a purchase of their property at the end of it.

In all this mass of testimony there is, except in one single instance, no reference to the Gilsey House interview, and that reference embraces neither of these important considerations, and the subject it did embrace was very fully disposed of in Mr. Vail's reply to it.

I think I had better read these two letters.

The first is found on page 170, and is as follows: —

“October 16, 1880.

“AMERICAN BELL TELEPHONE COMPANY, Boston, Mass.

“THEODORE N. VAIL, Esq., Manager.

“*Dear Sir:*—Replying to yours of September 11th, desire to say:

“We fully understand the language of your circular, form 225, dated September 1, '80, but fail to see any justice in the same in not applying to this companying.

“When we made our contract agreeing to advance the interests of the Bell Telephone Company and fight the Western Union Telegraph Company, we were informed that no one could purchase or rent a telephone or transmitter at less than ten dollars per annum, and we were not to charge any more or less than ten dollars per instrument per annum for private lines or any purposes they might be called in use for when not connected with the central exchange system. We were encouraged by your remarks and the instruction of your board of directors of the Bell Telephone Company of New York, that we would be fairly dealt with, and would receive the benefit of any reductions that would be made in the rent of instruments, and were given to understand at that time, that the Bell Telephone Company of New York was allowed twenty per cent. discount on our rentals, and that was all they were to receive in granting us the exclusive license for our territory.

“You will please call to mind the conversation we had on the same subject in our conference at the Gilsey House in New York, about April 15th, when you stated as president of the Bell Telephone Company of New York, that if we purchased

“the Western Union plant in Newark, we would have the benefit of any reductions made to others. As your circular states you do make a reduction of over fifty per cent. to others. Mr. B. F. Storke, Manager Western Union Telegraph Company’s telephone department, informed me when he assisted in making the transfer of their property to this Company that he was getting thirty per cent. discount on the Bell instruments in use at the exchange in St. Louis, Mo., and other places he was interested in; and recently we were informed that the Metropolitan Telephone and Telegraph Company of New York received a discount of fifty per cent.

“This matter has been before our directors and others in interest with this Company, and we feel that we are justly entitled to at least thirty per cent. discount on the rent we have been paying under our present arrangement, having had this understanding with you, and any further reduction that may be made in the future. We hope this matter will receive your prompt attention and kind consideration, believing that if it is looked at in its proper light we will receive all we have asked for, and your good wishes for our success at the same time. Neither of the companies named can afford to have disagreements on this or any other matter, as it requires harmony for success of the object we are all working for, the Bell telephone.

“Yours truly,

“F. T. FEAREY,  
“*Secretary and Treasurer.*”

They offered this letter in evidence *early in this case*—that is, they offered their *letter press copy in evidence*—for they didn’t have the original, of course—but they offered it because in their catching out after the historical straw, they thought that this one letter out of fifty-two gave them a chance to attach some importance to the Gilsey House entertainment.

*They had Mr. Vail’s original answer in their possession.*

Did this Domestic Company, which has been so imposed upon and deceived and betrayed, and whose conduct had been so fair and open and honorable, and whose president made so extraordinary an effort to make things connect, that he offered two unimportant letters in evidence; did they offer this original answer of Mr. Vail’s which they had tucked away so securely that they almost failed to find it at all, and didn’t find it until Governor Bedle fished it away from them under his rigid cross-examination?

Not a bit of it.

A perusal of it will show why they tried to smother it away.  
It is found on page 423, and is as follows :

"No. 18,055.

BOSTON, October 20th, 1880.

"In reply to yours 16th inst.

"THE DOM. TEL. & TEL. CO., Newark, N.

"J. F. T. FEAREY, ESQ., Sec'y and Treas.

"*Dear Sir:*—I think if you will examine into the circular of  
"September 1st more closely, you will find that it only related  
"to telephones for speaking tube purposes, which confines  
"the use of the telephone entirely between offices in the  
"same building or between buildings belonging to the same  
"factory, or between a house and stable, and such other  
"uses as are equivalent to speaking tube uses. *Under*  
"*your agency contract* you have the right to get tele-  
"phones for the above uses at the prices mentioned in the  
"enclosed circular. We make different rates for the different  
"purposes for which telephones are used ; exchange and pri-  
"vate line purposes, \$10.00 ; social or club line purposes, \$7.50 ;  
"speaking tube purposes, \$5.00 per annum. *In the contract be-*  
"*tween yourselves and the New York Company*, it is expressly  
"stipulated that you pay the gross rental paid by that com-  
"pany. You understood at the time from the gross rental the  
"B. T. Co. of New York had a discount, otherwise where  
"would be the profit in allowing you to carry on the exchange  
"business?

"So far as rates for telephones are concerned, you get the same  
"rates precisely that other companies do ; but you do not get  
"the discount allowed to other companies, to induce them to go  
"into the business ; as in your case the discount has already  
"been allowed by this Company to the New York Company,  
"and your arrangement being with that company. You will  
"understand also that your dealings are exclusively with the  
"New York Company ; this Company, of course, not knowing  
"you in the transaction, but only the New York Company, to  
"whom it has given an exclusive license.

"I think if you will see Mr. Davis, he will be able to explain  
"the matter to you fully, and show you that it arises entirely  
"from misapprehension on your part.

"Yours truly,

"THEODORE N. VAIL, *Gen'l Manager.*"

*Mr. Vail put their rights just where the law puts them—on their contract, and not upon any verbal interview which could not at law vary them.*

I am willing to concede that the letter which the Domestic wrote to Mr. Vail, was written in good faith. They didn't think of litigation then, and the fact that *they didn't even get the date of the Gilsey House interview right* shows how little importance they then attached to it, and innocently as it was written, their conduct in offering their press copy and suppressing the original answer which they had in their possession, keeping it back Ananias like, to make things connect, merits more indignation than my system contains.

This answer of Mr. Vail was followed by the letter the Domestic Company wrote to Mr. Davis on October 28, a few days later in which they placed their claim to reduction *in terms* upon the understanding (as they understood it) *when the original contract was made*. This letter I have already read, and need not trouble your Honor with it again.

So on January 11, 1881, George W. Hubbell, Fred. T. Fearey and John D. Harrison got together, or, rather, Messrs. Hubbell and Fearey gathered John D. Harrison to their bosom, and they wrote a letter to the Metropolitan Company.

Now I repeat: In the original bill filed in this cause no mention was made of the Gilsey House interview, or the bargain alleged to have been made there.

Mr. Hubbell in his affidavit appended to that bill says (p. 17, Court Errors case, l. 25) that he wrote this letter upon the authorization of his Company (though no minute of his Company bears him out) and they were all looked into in this case; and (p. 17, Court Errors case, l. 21) that the distinct purpose of writing it was, not to get a renewal of his contract, but to get a reduction in rentals.

This letter of January 11, 1881, is found on page 172, and is as follows:

“NEWARK, N. J., Jan. 11, 1881.

“METROPOLITAN TELEPHONE & TELEGRAPH COMPANY, New  
“York, N. Y.

“Gents:—In the matter of a new contract for this Company  
“now under advisement, we would respectfully ask that the  
“new contract be made for the term of ten years from original  
“date, with like covenant of renewal as contained in the orig-  
“inal contract. Up to the present time we have not been able  
“to realize any profit from our business, our efforts having

“been directed to the prospective ability of our Company by the  
 “erection of substantial fixtures to earn a profit on our invest-  
 “ment. We have not felt authorized, however, in view of the  
 “comparatively short time which our contract has yet to run.  
 “to develop our system as thoroughly and with as large an out-  
 “lay of capital as if our plant had a greater degree of perma-  
 “nence. We have endeavored to have all the lines and the  
 “fixtures and apparatus of our system second to none in this  
 “country and believe we have succeeded, but with a longer  
 “lease we would feel justified in extending and enlarging our  
 “plant to the mutual advantage of the company and your own.  
 “We would also ask you to insert in our new contract the  
 “benefit of any reduction in the gross rental or discount on  
 “rentals of telephones whenever they may be made.

“Respectfully,

“GEO. W. HUBBELL, *President.*”

Thus was Hamlet, the renewal of the contract, born in the very last act of this drama, for this is the last we hear in this case of the renewal of their contract until they began to get ready to file their bill.

In the genuine Hamlet he appears in the *first* act, but in a travesty of course he would appear in the *last*. The ghost (the purchase at the end of the term) evidently miscarried, for there is not the faintest allusion to it in any of the exhibits in this case.

Now with your Honor's permission I will read portions of Mr. Hubbell's affidavit surrounding this letter, appended to the original bill.

He swears (p. 17, Court of Errors case, line 9).

“In the month of January, 1881, the Domestic Telegraph and  
 “Telephone Company *being desirous of obtaining telephones*  
 “from the Metropolitan Telephone and Telegraph Company *at*  
 “*a reduced rental*, lower than that provided for in the contract  
 “aforesaid (contract of Aug. 6, 1879), and having learned that  
 “other companies had been able to secure telephonic instruments  
 “at a less rental than that paid by deponent's Company, and  
 “having been assured by conversations and interviews had  
 “with the officers of the Metropolitan Company that a reduc-  
 “tion in the rental of telephonic instruments might be obtained,  
 “they did in the said month of January, A. D. 1881, *apply to*  
 “the Metropolitan Company *for such a reduction* of the rentals  
 “they were then paying under the terms of their contract with



“ said Company, and that deponent was authorized by his said Company to send a letter to the Metropolitan Company, of which the following is a true copy.”

(And here follows a copy of said letter of Jan. 11, '81, and then his affidavit continues):

“ That, *thereupon*, negotiations were entered into between deponent's Company and the Metropolitan Company on the subject matter referred to in said letter: that as *one of the results of said negotiations* the Metropolitan Company, admitting the right of deponent's Company to a renewal of its contract at the expiration of the term of five years aforesaid, caused to be prepared a new contract covering the matters referred to in said letter, and extending the time of deponent's Company's license to five years beyond the first day of September, 1884; and that said contract was *exhibited* to deponent in the presence of Mr. Fredk. T. Feary by Mr. Charles S. Gage, at that time Secretary of the Metropolitan Company, in the office of said Company in the city of New York: that during said negotiations, the Metropolitan Company distinctly and expressly admitted the right of deponent's Company to a renewal of its contract at the expiration of the term of five years proposed; and that said proposed contract did as aforesaid provide for said extension and renewal. But deponent further says that said proposed contract did as aforesaid provide for said extension and renewal; but deponent further says that said proposed contract, while providing for the term of ten years from Sept. 1, 1879, did not contain any covenant or privilege for a renewal of said contract beyond said term of ten years, and deponent's Company, having the right under their contract to a renewal of said contract not only for a period of five years beyond the termination of their said term, but to a *perpetual license* or contract for the enjoyment of their said territory, *did not* at that time nor subsequently *urge or request* the execution of said new contract; and not being willing to accept a reduction of the rentals of their telephones coupled with the condition that their right to the occupation and enjoyment of their said territory should cease at the expiration of ten years from Sept. 1, 1879, *they did not desire, nor did they agree to said new contract, and that said contract has never been executed or accepted by deponent's Company; and* deponent is informed and believes that said new contract had always been and still is in the possession of Metropolitan

“Company; and deponent further says that the Domestic Company, believing that its right of renewal of its said contract at the expiration of its said term would not be denied, *did not urge the execution of said new contract.*”

Mr. Frederick T. Fearey in his affidavit appended to the original bill says precisely what Mr. Hubbell says, that the object of this letter was to get a reduction of rentals.

I will read from his affidavit, beginning at line 34, page 35, in Court of Errors case:

“And the Deponent’s Company *being desirous of securing a reduction of rentals* for telephones, which reduction they understood and had been informed had been allowed to other companies similarly situated, and which reduction they had been assured at interviews had from time to time with the directors and officers of the respective companies should be allowed from time to time *did, on January 11, 1881, make a direct application* to the Metropolitan Company *for a reduction of such rentals*, which application was made *by letter, a copy of which is hereto annexed*, and was the result of said interviews; and, that in said letter application was also made for a renewal at the time of the term of deponent’s Company’s license, which it had a right to secure at the end of its term of five years as aforesaid, and did include also the further privilege of renewal beyond the expiration of ten years from September 1, 1879, asked for; that the Metropolitan Company did at that time agree to the right of deponent’s Company to a renewal and continuance of its license or license contract from September 1, 1884, and that a new contract was prepared and was exhibited to deponent in the presence of George W. Hubbell by Charles S. Gage, then Secretary of the Metropolitan Company, at their office in the city of New York; and that the said Gage *explained* to deponent *in the presence of said Hubbell* that said contract was drawn so as to extend the term of the license to the Domestic Company for ten years beyond September 1, 1879; and there were certain things contained in said contract which required the sanction of the Bell Telephone Company of Boston; and that under the circumstances the *said Gage did not feel at liberty to allow the deponent nor said Hubbell to read said contract*, NOR TO TAKE THE SAME IN THEIR HANDS; but that the understanding of deponent so far as he was allowed to know the contents or the meaning of said contract was as hereinbefore stated; and deponent further says that on or about January 27, 1881, at a

“conversation had with a director (Harrison) of the Metropolitan Company, he was informed that said contract could be obtained by the Domestic Company for a term of ten years as before stated, but that the renewal clause asked for in the letter of January 11, the same clause as contained in the original contract, could not be included in the new contract that was drawn at that time. And that at a meeting of the Domestic Company that matter was discussed and the execution of the contract *on the part of deponent's Company was delayed, for the reason that they did not choose to acquire a renewal of their contract which they were already entitled to unless the renewal clause provided for a further renewal beyond the expiration of the term of ten years agreed upon.* And deponent further says that said contract was not executed, nor has it ever been executed by or on behalf of the Metropolitan Company or deponent's Company; but that deponent is informed and believes that said contract, since the time of its exhibition to deponent as aforesaid, has been in the possession of the Metropolitan Company; and that, unless the same has been destroyed, it is still in their possession.”

Have I not said before in this case that Fred. T. Fearey hesitated about going to the length required to sustain this suit?

See what a difference there is between Mr. Hubbell and Mr. Fearey in these affidavits.

Mr. Hubbell swears “that said contract was exhibited to him in the presence of Mr. Frederick T. Fearey by Mr. Charles S. Gage, at that time Secretary of the Metropolitan Telephone and Telegraph Company, in the office of said Company in the city of New York,” and there he stops; and there could be no inference from that, *and he intended that no other inference should be drawn from that*, except that he examined that contract and ascertained for himself that it extended the time of his Company's license for five (5) years beyond the first of September, 1884.

Mr. Frederick T. Fearey was not willing to go to this extreme length, and he says that the contract was *exhibited* to him in the presence of Hubbell by Mr. Gage, and that Mr. Gage *explained* it to him in the presence of Hubbell, that the contract was drawn to extend the Domestic Company's license for five years, but that for certain circumstances Gage did not feel at liberty to allow him nor Hubbell *to read the contract nor even to take it in their hands.*

Now the Domestic Company, as I have shown in the affidavits

appended to the original bill filed in this cause, declared that the specific object of the letter of January 11, 1881, was to secure a reduction in the rentals of telephones, but having discovered in the progress of the case the infirmity of the 11th clause of their contract with respect to their right of renewal. they now come into Court and declare that the right of renewal for an additional term of five years was secured to them at the Gilsey House, and that (p. 172, l. 8) "although they knew they were "going to get a ten year contract" they "thought (p. 172, l. 7) "that under the circumstances they would like to have a covenant of renewal beyond the term of ten years" inserted in the new contract, and that that was the object of writing the letter of January 11, 1881.

Their counsel tell us there is no inconsistency here!

Do they expect to make these two statements harmonize?

Or do they expect the Court to adopt that one which best suits their present convenience?

Let us look into this letter of January 11, 1881, which bids fair to rival in fame the famous Gilsey House interview.

"In the matter of a new contract for this Company now under advisement." What does that mean?

I have never looked so closely into the meaning of any word or sought out its derivation with the diligence I have of this word "advisement."

Can it be strained to mean "agreed upon"? or "consummated"? or "fixed"? or "determined"?

Can it mean anything more than "in abeyance"? or "under consideration"?

And yet Mr. Hubbell says they *knew* they were going to get a ten year contract!

When this argument is concluded your Honor will probably announce that you will take this matter under advisement, if you do not promptly dismiss the complainant's bill.

Are we to understand by your Honor's action that your conclusions are reached and the decision definitely fixed?

If so why take the matter under advisement?

"We would respectfully ask."

Well, these were the politest sort of corporation fellows you ever heard of.

Corporations usually assert their rights in no uncertain language, and indeed individuals are not slow in demanding what they know they are entitled to, and what "they know they are going to get."

But our Domestic brethren go down on their knees and "re-

“respectfully ask that the new contract be made for the term of ten years from original date with like covenant of renewal as contained in the original contract.”

Now, it seems to me they went a good deal out of their way and used rather extraordinary language if the object of the letter was to gain a covenant of renewal beyond the ten years, as they now say it was.

What was the sense of respectfully asking that it be made for ten years if that part had been already agreed upon, and the object was to gain a covenant of renewal?

If the renewal had not been agreed upon and that was what they wanted, why not say, “In the matter of our new contract, we respectfully ask that it contain a like covenant of renewal as contained in our present contract.”

That would have expressed in half the words precisely the position our Domestic brethren desire to occupy to-day, *but not anywhere near the position they wanted to occupy when they filed their original bill.*

That would have carried with it a declaration which could not have been criticised, that an additional term had been agreed upon.

And that is precisely what careful, discreet and prudent, but forgetful George W. Hubbell would have said if their present position were not a sham and pretense.

“Up to the present time we have not been able to realize any profit from our business, our efforts having been directed to the prospective ability of our Company by the erection of substantial fixtures to earn a profit on our investment. We have not felt authorized, however, in view of the comparatively short time our contract has yet to run, to develop our system as thoroughly and with as large an outlay of capital as if our plant had a greater degree of permanence.”

Do you think that they meant until the end of the first ten years, which they “knew they were going to get,”—being eight years and eight months,—was the comparatively short time their contract had yet to run, and that the covenant of renewal which they said they were after in their letter, was what they wanted to give their plant a greater degree of permanence?

“We have endeavored to have all the lines and fixtures and apparatus of our system second to none in the country, and we believe we have succeeded, but with a longer lease we would feel justified in extending and enlarging our plant to the mutual advantage of the company and your own.”

Did they mean that with a longer lease than the ensuing

eight years and eight months which they "knew they were going to get," and which longer lease was to be secured by the covenant of renewal, was the basis upon which they would feel justified in extending and enlarging their plant?

And that without this longer lease—beyond eight years and eight months—to be secured by the covenant of renewal, they would not feel justified in extending and enlarging their plant?

Would they make their piteous appeal that they hadn't been able to realize any profit from their business and that their money had been expended in erecting substantial fixtures to develop their system and make their plant second to none in the country for the prospect of future profits on their investment, if they knew that "they were going to get a ten year contract" and that all the persuasion and argument was directed to securing a covenant of renewal which Mr. Hubbell now says was the object of this letter?

How thoroughly preposterous this story is.

The Gilsey House interview was bad enough but this deserves the cross-beam and the rope.

Which of the two opposing theories, either that this letter was written as Mr. Hubbell says, originally, for the explicit purpose of securing a reduction of rentals and that *thereupon*, as Mr. Hubbell says, negotiations were entered into respecting a new contract; Or that this letter was written as Mr. Hubbell at another time says, to get a covenant of renewal after a ten year contract had been agreed upon?

I say which of these two opposing theories does the letter itself bear out?

Do they expect the Court to sit here, and with the aid of *their own testimony* to sift out of this mass of contradictions some theory which shall aid them in their scheme and give them a contract which they are not entitled to at law, in equity or by any of the principles of justice, and a contract which by their own showing *they did not urge, would not agree to, and would not accept?*

No man can read that letter and not say that that was not *the very first suggestion* made by this Domestic Company respecting the extension of their contract, and that the clause asking for privilege of renewal was merely incidental to it.

No man can read that letter and not say that it was merely a proposition for an extension of the term without any anterior agreement or understanding whatever.

The Domestic Company, looking at it from a business standpoint, never seriously wanted a longer lease until then. Their

early experience in the telephone business had not been encouraging or successful.

Their treasury was empty when a few months before they had purchased the Western Union plant on credit, but the monopoly of the past few months had opened their eyes to the importance of the business.

They had paid off their notes and made money enough in these few short months to make their plant second to none in the country, as they say in their letter, and they would have been fools indeed, if they had not now, while a new contract was being prepared to embrace the private lines, the reduction in rentals when made by the parent company and the rebate to be made on the Western Union purchase, asked for an extension of territory and an extension of their contract.

But how much better do they stand before this Court on the subject of the extension of their contract than they would on the extension of their territory?

Do they expect the Court, merely because they respectfully asked an extension, to give them an extension unless the Metropolitan agreed to it? There is no pretense that they ever agreed to it.

Why, sir, if contracts like that can be enforced I may write a letter to Mr. McCarter, detailing my struggles to gain a livelihood at the bar and asking him to take me into partnership with him, and if his usual politeness and accustomed consideration for struggling young men led him to acknowledge the receipt of my letter and to say that he will consider the subject, he is in for it.

Mr. Davis answered this letter on January 13th, merely saying that the proposition would receive consideration with the others as soon as possible.

His letter is found on page 270, and is as follows:

“NEW YORK, Jan. 13, 1881.

“DOMESTIC TELEGRAPH AND TELEPHONE CO., Newark, N. J.

“*Dear Sirs* :—Your favor of the 11th inst. received and contents noted. *The proposition* will receive consideration with the others, and as soon as possible.

“Yours respectfully,

“JOS. P. DAVIS, *Vice-President*.”

Did that look like any knowledge on his part that he as practical President, the chief executive officer of the company,

knew anything about a contract for extension having been agreed upon, or that they knew they were going to get it?

Did he understand that as anything more than a mere proposition from the Domestic Company, no more and no less than their proposition to take in the balance of Essex County?

Mr. Hubbell even had no authority from his Company to make such a proposition.

He swears to his original bill that the letter was written by the authorization of his Company, but his minutes, "which state exactly what occurred," do not bear out his statement.

What did the Domestics think their rights were under their clause of renewal?

Their contract said that under certain circumstances they might acquire a new license upon such terms as might be fixed and determined by their licensor, and it ended there.

For what period might they acquire a new license? Will they contend that they might acquire it for a longer period than the original license?

The courts have said they cannot acquire it at all under their contract, and do you suppose it ever entered into the mind of a single one of them that they might acquire it for longer than the period originally named without further agreement on the part of the licensor?

They thought they had the undoubted right to acquire a renewal of their contract under its eleventh clause. John D. Harrison believed from the bottom of his heart that they had that right unless one of the contingencies in that clause arose, and no man in New Jersey was more surprised than he when the Courts decided the other way. Among men untrained to the law ten hundred out of a thousand would have believed it, and I remember that two gentlemen thoroughly trained to the law, one of them the peer, if not the superior, of any member of the bar of this State, urged with force and power and most skillful and ingenious argument that under that clause the Domestic had a right of renewal. They relied upon that right, not only John D. Harrison, *but every one of the others of them*, and knowing that they could not look for anything beyond ten years without further agreement on the part of their licensor, it was shrewd of them to ask that their contract be made for *ten years from original date*, not for five years additional, but ten years from original date *with like covenant of renewal as contained in the original contract*, for they thought then they would have a contract good for twenty years, which would carry them beyond the life of the patents.



Now I say that by any fair rule of interpretation this letter was merely a respectful application, without any agreement whatever on which to base it, and Mr. Davis understood it so, and the next act in this drama shows conclusively that *it was so intended by the Domestic Company.*

They held a meeting on January 27, 1881, from which it appears (p. 314, l. 26) that the "letter from Joseph P. Davis in reference to our contract called out considerable discussion "as to what our position would be *provided the same is made for ten years from original date instead of five years*, and "leaving out the clause of renewal. It was thought that the "matter could be satisfactorily explained when the new paper "reached us."

If my theory is not correct, if they had a certain thing for ten years anyhow, and the purpose of their letter was to get a clause of renewal, why did they enter into considerable discussion *upon the subject of five years* at all? Why did they mention that?

They had nothing more to do with five years.

Why don't their minute show that Mr. Davis's letter called out considerable discussion as to what their position would be at the end of ten years if the new contract left out the clause of renewal?

Ah! the Domestic Company, when they didn't think of litigation, transacted business with the ponderosity of particularity and "their minutes state exactly what occurred."

Now let us turn again to Mr. Hubbell's testimony.

He says (p. 173, l. 10): "Shortly after this time the contract "was finished and sent to New York, the exact date of which I "cannot fix." (He knew so much about the affairs of the other companies it is a wonder he didn't fix that date.)

"But shortly after the date of this letter of January 11, 1881, "I called at the office of the Metropolitan Company in company with Mr. Fearey and met Mr. Charles S. Gage *alone.*" How significant that is.

I wouldn't have said that in a weak case if I had been Mr. Hubbell, no matter how true it might have been, for it opens a wide door for criticism, but it was said advisedly, and for a purpose.

But if it is true it won't serve his purpose. It will be borne in mind that this is the interview with Mr. Gage described by Mr. Hubbell in his affidavit to his original bill in which he states that the contract was exhibited to him by Gage, and stops there, leaving whatever conclusion to be drawn that could be.

But now when he is to be subjected to a cross-examination he says: "I met Gage alone and he informed me that the contract had arrived. He then produced it *but would not let me read it through.*"

Frederick T. Fearey says that he wouldn't even allow Hubbell to take it in his hands.

He said (p. 173, l. 25) that the "contract had been prepared in Boston *but had not yet been supervised and examined by the Metropolitan Company* or their officers, and that he did not feel at liberty to allow me to read it through. He opened it so I was enabled to see and read that it was a contract between the Metropolitan Company and the Domestic Company, that is what it purported to be according to the heading, to the best of my recollection. He informed me that it was a contract covering a period of ten years from the date of our original contract but that it did not contain any covenant of renewal. "I told him I was glad to see that the contract had arrived and that I would call in some other time when I could be allowed to see it. *Our Company rejected the idea of receiving that contract.*"

Now suppose that story was true,—for this Mr. Gage, with whom Mr. Hubbell seems to have had confidential relations more than once in this case, has become insane (p. 821, l. 16) and we were not able to contradict this statement, but suppose this story is true, will it help the Domestic Company out?

To resume my illustration with Mr. McCarter:

Suppose after having written to Mr. McCarter and respectfully asked him to take pity on my struggles and having received his polite and gentlemanly answer that he will take the proposition into consideration (and I admit that all this illustrative supposition as far as Mr. McCarter is concerned is very violent), and suppose I go up into his office *and find his son alone*, and he confidentially tells me that his father has drawn a copartnership agreement with me, and although he is his father's secretary, without any authority from his father (and this is very violent against Mr. McCarter's son also) he goes and gets the contract and turning down the page he says: "I can't let you read this through, for father is afraid you may get the better of him, and he wants to submit it, before executing it, to some lawyer, who only by the power of imagination, and hardly that, is more capable than himself; but here you can see that I am not deceiving you. It is an agreement between you and it is for ten years."

Suppose I came before this Court with a bill to enforce such

a contract as that, and relied upon such testimony as this to enforce it?

Your Honor would feel that your sense of responsibility was not satisfied without taking prompt measures for my disbarment in order to keep the bar clear of idiots and lunatics.

Mr. Hubbell says in his testimony already read that Gage said the contract had been prepared in Boston *but must yet be supervised by the Metropolitan Company.*

Mr. Fearey couldn't bear out that statement and so he wasn't examined upon it, for he had sworn in his affidavit appended to the original bill that the new contract had been prepared *by the Metropolitan Company and yet requires the sanction of the Bell Telephone Company of Boston.*

Which of these two diametrically opposite propositions do they ask the Court to believe?

Ah, they found Mr. Gage alone!

A conspiracy, which always involves getting some weak man alone, rarely succeeds.

It is well nigh impossible to hide the truth, it is mighty and will prevail.

It will force its way to the front "with amazing rapidity and success," and manifest itself in ways which conspirators never think necessary to conceal.

"Why didn't we call Gage to deny this important interview and contradict this testimony?"

What do we need of Gage?

Gage could never have achieved one-half the success in contradicting these gentlemen which they have achieved in contradicting themselves.

Now I have said that this was the last we heard of a new contract in any of the exhibits in this case—and there were 105 of them following this meeting of the Domestic Company on January 27th, 1881—until we come to the litigation.

They had made application to the Metropolitan Company for the three items, of private lines, reduction by the parent company, and the method of settlement of the unsettled items in the Western Union purchase to be incorporated in the license to be granted by the Metropolitan Company, and Mr. Davis esteeming the first two of these proper to be inserted in the new contract had busied himself at his leisure in making the experimental draft of a new contract found on page 1356.

The other item, that is, the method of settlement of the unsettled items of the Western Union purchase, would strike the average business man as having no proper place in a contract

like this, and it had been settled in the correspondence between these two companies, and so it had neither proper place, nor was it necessary to incorporate it in the new contract.

Let me follow down this correspondence, for it will not only demonstrate that this item had no proper place in this contract, but also that the Domestic Company dealt with the National, or American Bell in this purchase of the Western Union plant. On August 17, 1880, the American Bell Company of Boston had forwarded to the Metropolitan Company a statement of the cost of establishing the Newark Western Union Exchange. The letter in which that statement was enclosed is found on page 1103, and is as follows:

" BOSTON, August 17th, 1880.

"In reply to yours,

No. 14,990.

"THE METROPOLITAN TELEPHONE AND TEL. COMPANY, New  
" York.

" *Dear Sirs:*—We enclose herewith detailed statement of cost  
" of establishing former Western Union Exchange at Newark,  
" N. J., \$11,653.40. Kindly have this statement examined care-  
" fully, and should any of the items therein contained prove to  
" be incorrect or such as in your opinion are not justly charge-  
" able to the cost of establishing an exchange, at once inform us  
" of the fact, when we will take the proper steps to have the  
" same looked into.

" Yours truly,

" O. E. MADDEN,

" *Supt. Agencies, per Wm. B. Ross.*"

On the very next day the Metropolitan Company forwarded their statement to the Domestic Company with a copy of the American Bell's letter, and asked the Domestic to make an examination, and report if any of the items were improperly charged.

The letter of the Metropolitan containing these enclosures is found on page 1103, and is as follows:

" NEW YORK, Aug. 18th, 1880.

" DOMESTIC TELEGRAPH COMPANY, Newark, N. J.

" *Dear Sirs:*—We send herewith a copy of a detailed statement  
" of cost of establishing the former Western Union Exchange  
" at Newark, and a copy of the letter from the American Bell  
" Telephone Co. requesting examination, etc. Will you please

"have the examination made as requested, and forward the  
"information desired to us, and oblige,

"Yours respectfully,

"Jos. P. DAVIS, *Ch. Ex. Com.*"

The Domestic Company took action on this statement and these letters at a meeting on August 20th, and their minute (page 356, line 7) shows that "Harrison moved to refer to officers to adjust and report back to the board for final action."

The next day, August 21st, the Domestic Company acknowledged the receipt of the statement from the Metropolitan Company by a letter found on page 1099, which is as follows:

"No. 792 BROAD STREET, NEWARK, N. J., Aug. 21st, 1880.

"THE METROPOLITAN TELEGRAPH AND TELEPHONE COMPANY,

"New York, N. Y.

"*Dear Sirs:*—We are in receipt of your favor of the 18th  
"with copy of a detailed statement of cost of the former West-  
"ern Union telephone exchange in this city.

"In compliance with your request the matter has been re-  
"ferred to a committee, who would endeavor to report at an  
"early day. Yours respectfully,

"F. T. FEAREY,

"*Sec'y and Treas.*"

On August 31, 1880, the Domestic Company wrote to the Metropolitan a letter found on page 407, as follows:

"NEWARK, N. J., Aug. 31, 1880.

"JOSEPH P. DAVIS, Chairman Executive Committee M. T. and

"T. Co., New York.

"*Dear Sir:*—The committee appointed to examine statement  
"furnished us of the cost of establishing the Newark Western  
"Union Exchange, desire to be furnished with the following  
"information:

"A detailed statement of amount charged in the exchange  
"during months of April and May, 1880. A statement of items  
"or vouchers of the following: On

"Page 1.

"Labor and expense in constructing equipment,

"amounting to

\$3,134 59

"Page 2.

"Fixtures on roofs, amounting to

643 45

"On what roofs? Give section.

“ Page 3.

“ Extra services of district superintendent,	\$200 00
“ Why charge to this exchange?	
“ Purchase of telegraph fixtures and lines,	85 00
“ What line and what fixtures?	
“ Three and one-half per cent. on gross amount of bill,	339 40
“ Why charge to this exchange?	
“ Unable to check a number of other items, but would like	
“ an explanation of above amounts before making mention of	
“ them.	

Yours truly,  
 “ F. T. FEAREY,  
*“ Sec. and Treas.”*

Of course it took the Metropolitan some little time to obtain the desired information, and on September 24, Mr. Davis sent them a new statement and also a copy of the letter from the American Bell enclosing it.

Mr. Davis's letter is found on page 159, and is as follows:

“ NEW YORK, Sept. 24th, 1880.

“ DOMESTIC TELEGRAPH Co., 792 Broad Street, Newark, N. J.

“ We enclose new statement of Western Union plant in Newark, which, with the letter from the American Bell T. Co., a copy of which is also enclosed herewith, gives you the information asked for in your letter to us of August 31st ult. “ We notice that on your letter head your name reads ‘ Domestic Telegraph & Telephone Company.’ Has the name of the ‘ Domestic Telegraph Company of Newark,’ been changed to above by amended certificate of incorporation, or is the former a new company? We had not considered the subject of an extension of your territory suggested in your letter of Sept. 22, but do not at present think we shall insert such a provision in the contract.

“ Have you any knowledge that Jos. H. Wehrle, Norfolk Street, Newark, is making and selling bogus telephones? “ We have information tending to show that he is.

“ Yours respectfully,

“ JOS. P. DAVIS,

*“ Act'g Pres't.”*

On October 8, the Domestic Company answered Mr. Davis's letter by communication directed to both the American Bell and Metropolitan, which letter is found on page 110, and is as follows:

" NO. 792 BROAD STREET, NEWARK, N. J., Oct. 8th, 1880.

" AMERICAN BELL TELEPHONE CO., Boston, Mass.

" METROPOLITAN TELEPHONE AND TELEGRAPH CO., New York,  
" Agents.

" *Dear Sirs:*—We enclose herewith statement of items which,  
" in our opinion, are improperly charged to the cost of material  
" and labor, in placing the same in construction in establishing  
" the former Western Union Exchange at Newark, N. J.

" Please state the proper steps to have the same placed to our  
" credit.

" As we understand from all our correspondence on this sub-  
" ject, we are to pay only for the material in use and available,  
" and cost of placing the same, without any regard to other  
" items, which are more properly classed as profit and loss in  
" operating the business.

" We have made a liberal allowance in taking the property  
" as we found it when the transfer was made, and hope for an  
" early settlement. Yours truly,

" F. T. F.

GEO. W. HUBBELL,

" *President.*"

Mr. Davis answered on October 12, and I will read this  
answer, found on page 1102, which is as follows:

" NEW YORK, Oct. 12, 1880.

" DOMESTIC TELEGRAPH AND TELEPHONE COMPANY, Newark,  
" N. J.

" *Dear Sirs:*—Your favor of the 8th inst. with enclosure re-  
" ceived, and we will forward same or copies to American  
" Bell Tel. Co., that your views may be presented in the gen-  
" eral adjustment. In this matter you are, as the correspond-  
" ence shows and has been all along understood, to pay the cost  
" of establishing the W. U. Exchange at Newark.

" There will undoubtedly be differing opinions as to some  
" items as to whether they should be classed as cost of estab-  
" lishing the exchange, or as an operating expense, but as we  
" have before said, we shall use the same exertion to reduce  
" the finally ascertained cost in the Newark case as in the case  
" of other suburban Western Union exchanges.

" Yours resp'y,

" JOS. P. DAVIS,

" *Acting Pres't.*"

You can see where the responsibility rested of adjusting the cost of the Western Union plant.

The Metropolitan Company had not sold the plant to them; they had bought it from the parent company, and the Metropolitan had no more to do with it than your Honor had, excepting as agent of the parent company.

So I think it becomes quite evident why Mr. Davis didn't include the provision in the new contract.

I think an inspection of Mr. Davis's experimental draft of a new contract, found on page 1356, will demonstrate that he didn't depart from the provisions of the contract of August 6, 1879, except in the particular requested by the Domestic Company in their memorandum of items left with him about June 15, with the exception that he went into some details on the toll business, which right was reserved to the licensing company by the terms of the contract of August 6, 1879.

This experimental draft can have no force or effect in this case, because it was never executed, never submitted to either company for examination or execution, and its only value is to show that the Metropolitan Company, or Mr. Davis, never contemplated a contract to extend the Domestic license beyond the period of its existing contract.

Mr. Davis, through misapprehension, intended to have his experimental draft cover the period until the last of September, 1884, instead of the last day of August, 1884, but I guess the mistake is considered a stand-off, for he got it until the last day of September, *one thousand and eighty-four*, which would not do our Domestic brethren much good.

Mr. Davis says after he made his experimental draft he sent it on to Boston to Mr. Hudson, the counsel of the American Bell Company, and he tried his hand at fixing up a contract for these companies. It was never executed, or even completed, and never submitted to either company for execution.

It is termed the "Fly leaf contract," and somewhat remarkably it was marked "D Q" in this case.

I have examined this remarkable production only so far as to ascertain that it never intended to extend the Domestic Company's contract.

That was the only value it could have.

Mr. Young went into a very elaborate discussion of its provisions, and finally brought up with the conclusion that because it mentioned no term it must have been a ten year contract, but he might, with quite as much force and logic, have contended



that it was for twenty years—or perpetual, as Messrs. Hubbell and Fearey were so certain they were entitled to.

Even if it, or the Davis draft, had extended the Domestic contract for five years, unless some authority could be shown for such extension, and until it was executed and accepted by both companies it could not have force or effect.

Mr. Davis stands uncontradicted in this case in his statement that no such action was taken by the Metropolitan Company, and Mr. Hubbell stands uncontradicted that his Company rejected the idea of receiving that contract.

The minutes of the Metropolitan Company have been at the disposal of the complainants, and a fishing precedent has been afforded them, but they did not avail themselves of an opportunity to cast out a line.

Now, to return briefly to Mr. Hubbell again, he says in his testimony (p. 173, l. 40) “that his Company rejected the idea “of receiving that contract for the reason that it contained no “covenant of renewal beyond the period of ten (10) years, and “we had as good as that then. We considered that we were “every bit in as good position under the contract of August 6, “as we would be under the ten year contract.”

And I have no doubt Mr. Hubbell was very much mortified over his mistake, when this Court and the Court of Errors and Appeals decided against his motions as to the rights of his Company under their contract.

Then he adds (p. 174, l. 8) that “there was another reason “why the contract was not then executed or why there was no “effort made to harmonize or negotiate concerning the point of “date, or rather to negotiate concerning and harmonizing the “points of difference.”

He says, “That reason I didn’t state in my affidavit for the “simple reason that I didn’t wish to develop that matter at all, “but I consider it *now* necessary and therefore state it. The “reason was that the Superintendent, or the *person* who was “acting as such for the Metropolitan Company—a *man by the* “*name of Grinstead*, and our Superintendent, *Mr. Jabez Fearey*, “got into a rather violent altercation with respect to the responsibility of the different companies with regard to through “messages and the division of labor between the two companies. The Domestic Company took care of the lines to the “Hackensack river, and Mr. Grinstead would lay up every “trouble, and every failure to send a through message upon our “Company, or so to speak, upon our Superintendent, until “the thing got to be unbearable, and a very unpleasant dis-

“agreement occurred, in which Mr. Davis took part, seeming to support and back up, so to speak, Mr. Grinstead, while we on our part were fully satisfied with the course taken by our Superintendent. The consequence was a total suspension of all friendly communication between the Metropolitan Company and ourselves from that time until this date, and no communications passed between the companies, except those that were absolutely necessary, and *that was the real reason* why this contract was not absolutely and actually signed, and the difference in opinion regarding it in some way negotiated upon and harmonized.”

Mr. Hubbell recited this touching tale as if laboring under much physical suffering and laceration of heart.

He prefaced it with the statement that he had not wished to develop it at all, but that *now* he considered it necessary to state it.

If your Honor will look at the amendment to the bill, found on page 23 at line 19, you will find this allegation:

“Because of a personal and acrimonious altercation between the Vice-President and Superintendent of the Metropolitan Company and the Superintendent of your orator’s company, relating to alleged defective communication between the cities of Newark and New York, which altercation impeded and embarrassed negotiations and intercourse between the said companies, the said new contract was never in fact executed.”

The idea was so absurd and so silly that no one could wonder that when Mr. Hubbell gave his testimony, he had forgotten that he had incorporated such nonsense into his amended bill.

He says Mr. Davis took part and backed up and supported Mr. Grinstead while we meek Domestic fellows were merely *satisfied* with the course taken by Mr. Fearey. Judging from that moderate and unimpassioned St. Patrick’s day, 1881, letter written by their mild-mannered superintendent, which Mr. Young saved me the trouble of reading—by apologizing for it himself—I don’t think Mr. Jabez Fearey needed anybody to take his part, or back him up, or support him.

I think, however, to make my own story complete, I will read that letter.

It is found on page 711, and is as follows :

“NEWARK, N. J., March 17, 1881.

“MR. JOSEPH P. DAVIS, Vice President.

“*Dear Sir:*—For your information, and for the benefit of the service, I make the following complaint :

“Since the sleet storm of Jan’y 21st, the N. Y. trunk wires  
 “have been in a terrible bad shape. At no time from Jan’y  
 “21st to Monday last were we able to get a test with the J. City  
 “Exchange, or any satisfaction from that office, as to where the  
 “trouble was, or whether he or we should look after it. I have  
 “sent our repair man over our section a number of times since  
 “the storm, and have found but very little trouble—but two  
 “crosses have been taken out, and those would not have been  
 “in for any length of time had the J. City office made any effort  
 “to test the wires and locate the trouble. Such management  
 “*is a disgrace to the business*, and should be remedied. As a  
 “result of this management we have been compelled to take  
 “out the telephone at the Newark Silk Mills on account of the  
 “unreliability of the N. Y. service. Is it not time that some  
 “action was taken in the matter?

“*Your Supt. don’t know his business*, as I will show. On  
 “Mch. the 14th, a new wire was run into this exchange from  
 “the Orange Exchange. In testing it up it was found to be  
 “crossed with another trunk wire, No. 1, I believe, and  
 “your *pig-headed Supt.* ordered his line man from the  
 “Orange Exchange to follow that wire clean through to this  
 “office. *Nobody but a fool* would have done such a thing, as  
 “the wires cannot get crossed in this city, and besides that  
 “we do not need his assistance to take out trouble here, and  
 “also question his right to so act. This was at 2 P. M. His  
 “man came through, *and was promptly ordered back by myself*  
 “at 6 P. M. The trouble was found in Orange, probably at the  
 “Orange Exchange.

“This is a positive fact, and I have the proof to back it up.

“I don’t wish to find fault, *but such nonsense is played out*  
 “*with me.*

“Yours vy. truly,

“J. FEAREY, *Sup’t.*”

Mr. Hubbell says in his testimony which I have just read, that  
 this quarrel—or violent altercation as he prefers to term it—  
 was *the real reason* why this ten year contract was not abso-  
 lutely and actually signed, while on the very next preceding  
 page he had declared that the reason why it was not executed  
 was because his Company rejected the idea of receiving it.

In Mr. Harrison’s most successful exploitation, he was never  
 to be compared to Mr. Hubbell as a rover.

Then Mr. Hubbell recited the following bit of interesting in-  
 formation (p. 175, l. 6): “The right of the Domestic Company

“to have a renewal of its contract, and an extension of its contract beyond the period of five years was never in any letter or communication or by word of mouth denied or questioned.”

And so evident was it to us all from Mr. Hubbell's manner and tone that he was merely *reciting* a disquisition and not giving testimony that my associate asked him (p. 175, l. 11), “Are you reading, sir?”

There are a great many things in this world that have never been by letter or communication, or by word of mouth denied or questioned.

Your Honor has never denied or questioned the right of Mr. Young to usurp your place on the bench.

Mr. McCarter has never denied or questioned the right of some upstart to deliver his argument in this case.

Governor Bedle has never denied or questioned the right of some intruder to take possession of his property and practice.

Mr. Young has never denied or questioned the right of his client, Mr. Hubbell, to make a very bad case—upon which he has made a very good argument.

None of these things have ever by letter or communication, or by word of mouth been denied or questioned—merely because the necessity for such denial or questioning never presented itself.

Now, the Domestic Company met again on April 26, 1881, and their committee reported (p. 342, l. 8) that they had closed the Western Union purchase as far as lay in their power—though, if their story be true, they had the power to compel a contract in accordance with the terms of their purchase.

From the organization of the Metropolitan Telegraph & Telephone Company to about the first of October, 1881, that company had operated all the New Jersey territory lying within this thirty-three mile radius, excepting the Domestic territory.

The business had developed and prospered and grown, and the Company was anxious that it should be still further developed; so, on the 1st of October, 1881, they made a contract with the Metropolitan District Telephone Company (which had been formed) (found on page 102) that it, the Metropolitan District Company, should take charge of all the territory in this thirty-three mile radius (excepting New York City, Richmond county, the Domestic Territory and Connecticut); that it should proceed as rapidly as possible to establish local exchanges within this Territory to be owned and operated by local companies, in which

*in addition to rentals, royalties and other payments to be agreed upon, the Metropolitan Telephone & Telegraph Company should be a stockholder to the extent of one-third of the stock of such local company to be organized, in consideration of the grant of proper licenses by the Metropolitan Company to such local companies so proposed to be organized.*

The Metropolitan District Company was bound by this agreement to have these local companies so organized within two years, and the business so developed within that time as to be turned over to the local companies.

This contract took cognizance of the Domestic situation, but sought to do nothing which should in any way contravene their rights, but its terms in reference thereto are significant in showing that the Metropolitan Telephone and Telegraph Company had no thought of any right existing in the Domestic Company, except such as was guarantied to it by its contract of Aug. 6, 1879.

The provisions of this contract with reference to the Domestic Company cannot be better explained than by reading its seventh clause found on page 107, as follows:

“7th. In case upon the termination of the license of the Domestic Telegraph and Telephone Company of Newark, New Jersey, for the use of telephones, said company and the first party hereto shall not agree upon a renewal or extension thereof or of a new contract therefor, then it is agreed that the territory now covered by the license of said company shall be added to the territory and come under the exchange contract of that one of the companies above agreed to be organized for the operation of exchanges, the territory of which encloses the territory of said Newark Company; provided, however, that the second party shall assume all the obligations and be entitled to all the benefits of the first party under said license contract with the Domestic Company touching the plant of said Domestic Company.”

Now, this action of the Metropolitan Telephone and Telegraph Company in taking steps for the formation of local exchanges to be under local organizations *was plainly contemplated and unmistakably pointed at in the contract of August 6, 1879.*

It will be remembered that at that time the Bell of New York operated all this New Jersey territory excepting the Domestic territory.

The first section of the contract reserved to the licensor the right to refuse to furnish the Domestic Company telephones if the demand for them became too heavy, but provided that their supply should be *pro rata* with the supply by the Bell Company

*to other persons or companies in other districts under contracts now existing or that may hereafter be made between the Bell Company and such other persons or companies.*

It reserved the exclusive right, in the 6th clause, of establishing intercommunication between the Domestic district *and other districts* controlled by the Bell Company.

It restricted the Domestic Company, in the 7th clause, from charging a higher rate to subscribers than the average rate charged by the Bell in its own *districts* or by those licensed by it for corresponding service *in similar districts*.

And the critical eleventh clause provided that the Bell Company might after the expiration of the Domestic contract operate this district directly, *or merge it into some other district* (not into its own district), in either of which events the Domestic Company should have no new contract.

At the time of the execution of this contract the Bell Company had other *exchanges* in this New Jersey territory, but no other *districts*, and a glance through the contract constantly reveals the intention of creating *new districts*, which was carried out through this contract of October 1, 1881, with the Metropolitan District Company.

The Domestic Company met on September 29, 1881, and (p. 345) "discussed their position with the Metropolitan District Company," of whose existence they had heard, but took no action upon it.

They met again on December 22, 1881, and said in their minute (p. 346, l. 28) that a "letter from Metropolitan Telephone and Telegraph Company showed that progress was being made towards a settlement of *our claim against the American Bell Telephone Company, Boston.*"

They met again on June 20, 1882, and their minute says (p. 347, l. 26): "Some of the points in our telephone contract were *taken up, principally relating to our position at the end of five years.*"

They couldn't seem to get away from that five year notion, although it had been definitely promised and agreed that they were to have a ten year contract and the covenant of renewal was the only thing they were anxious about.

They met again on March 21, 1882, and (p. 348, l. 37) referred "a letter from F. P. Backus of Caldwell in regard to a tele-

"phone to John D. Harrison of the Metropolitan District Company."

It will be recalled that Mr. Davis had not answered their last two letters asking for an extension of their territory—so they had no better grounds of hope if they renewed the application again, and wisely concluded that they would refer it to the company where it belonged.

And now we come to one of the most remarkable episodes of this whole business.

As remarkable as the Gilsey House interview, which so overwhelmed our Domestic brethren that they temporarily forgot all about it, or as the January 11, 1881, letter which was originally declared to be written for a single specific purpose but by a peculiar species of Domestic legerdemain can be made to serve almost any other.

I refer to the pilgrimage which Mr. Hubbell and Mr. Fearey, on the sly, made to Boston on May 4, 1882, to see Mr. William H. Forbes, the President of the parent company, when they took their topics of conversation along with them.

Mr. Hubbell was so forgetful, but he could remember things which had happened a long time ago. They made a great impression on his mind.

Now this pilgrimage, like those twin relics, the Gilsey House interview and the letter of January 11, 1881, had some preliminaries.

Mr. Hubbell says (p. 1146, l. 22) that his object in going to Boston was to see Mr. Forbes; to see from him in what position their contract was, and that he wanted to inform him of the use of bogus instruments.

He wrote to Mr. Forbes on April 27, 1882, *that he expected to be in Boston on May 4*, and wanted to meet him on some matters of interest to the Domestic and American Bell Companies and asked him if he could see him on that day.

This letter is found on page 1202 and is as follows:

"NEWARK, N. J., April 27, 1882.

"W. H. FORBES, Esq., Prest. Am. Tel. Co., Boston, Mass.

"*Dear Sir:*—I expect to be in Boston on Thursday, May 4th, and desire to meet you on some matters of interest to this Company and the American Bell Tel. Co.

"Will you kindly let me know if I can see you on that day?

"Yours truly,

"GEO. W. HUBBELL,

"*President.*"

He was ashamed to let Mr. Forbes know that he would make so long a journey merely to pry into the affairs of the Metropolitan Company, which company was under no obligations to him whatever, except so far as they had succeeded to the rights of the New York Bell under the contract of August 6, 1879, for the Metropolitan Company had certainly made no contract or agreement with him, and so he intimated to Mr. Forbes that his business would call him to Boston on May 4, and if Mr. Forbes was going to be in he would call.

Neither did he tell Mr. Forbes that he was going to bring Mr. Fearey or anybody else with him.

He says, and he says it repeatedly, emphatically and distinctly (p. 1119, l. 36), (p. 1120, l. 18), (p. 1125, l. 3), (p. 1146, l. 15), that *he did not go to Boston to see Mr. Vail*, and when asked (p. 1146) why not, he made the amazing answer (p. 1146, l. 22):

“Why, Mr. Vail was a director and president of the Metropolitan Company, and we wanted to see Mr. Forbes, &c.”

And he declares that his contract was with the Metropolitan Company of which Mr. Vail was President.

All this is quite strange.

Mr. Fearey also says (p. 1201, l. 10) that they did not expect to see Mr. Vail.

Now, it strikes me that when an interview is brought about with a shadow hanging over it, its story by the one who casts the shadow ought not to count for so very much.

But let us see what transpired there, and first of all let us read these topics of conversation which Mr. Hubbell says he carried along to aid his treacherous memory.

They are found on page 1124, and are as follows:

“MEMORANDA.

“Exclusive right for telephones for district exchange, private line and local purposes as per the original agreement—  
“also telephones for special and speaking tube purposes.

N. B. (Last eight words were written with lead pencil and in different handwriting.) “As arranged with T. N. Vail we  
“were to have the benefit of any reduction in royalties paid for  
“instruments as soon as they were made to others, that he  
“thought the rate would be \$15.00 per annum, per set.

“In what shape is the new contract that we were to have  
“when the Metropolitan Telephone and Telegraph Company  
“organized, which was to extend term of license to ten years.

“*The present profit in the telephone department about pays*



*“for keeping up the repair of lines and construction in the natural growth of the business. Bogus telephones are in use at factory of Andrew Albright and residence of Doctor Titus and others. Private lines established when original agreement was made have never been transferred to this Company.”*

Of course they have no more effect against us than if Mr. Hubbell had stated in them that the Metropolitan had agreed to assign their own contract or territory to his Company at the end of five years, or that Mr. Vail had promised that he would give them ten dollars for every telephone they put in. But the Court ought to understand this business of May 4, 1882.

Mr. Hubbell says (p. 1120, l. 32), “We told both Mr. Forbes and Mr. Vail that it had been agreed that when the Metropolitan Company was organized we should have a contract for ten years from date of our original contract.”

Mr. Young asked him (p. 1120, l. 36), “Did you refer in that conversation to the Gilsey House arrangement?”

And he answered, “*We did.*”

Now further along Mr. Hubbell began to repent of that.

He was uncertain of Frederick T. Fearey, for Mr. Fearey had often refused to follow him, and he thought of Messrs. Forbes and Vail against him.

And so when Mr. Young two or three minutes later asked him (p. 1225, l. 16),

“Q. You have stated that at this interview in Boston you referred to the Gilsey House interview?”

He answered, “Yes, sir.”

Mr. Young then asked, “Was Mr. Vail present when you referred to that?”

And he answered, “*I don't think he was.*”

He didn't dare to say in Mr. Vail's presence that any such bargain was made at the Gilsey House! And why? *Because it wasn't true*,—or, rather, up to that time he had forgotten it.

Look at this bit of his testimony (p. 1121, l. 12). “We told Mr. Forbes that the idea of a ten year contract *emanated entirely from the METROPOLITAN COMPANY; that we didn't insist that that was any part of the Gilsey House arrangement*, but the *negotiations were commenced immediately after the purchase of the Western Union plant with the Metropolitan Telephone and Telegraph Company and was taken up by them.*”

In the light of Mr. Hubbell's testimony in this case, was that statement, if he ever made it to Mr. Forbes, true or false? I leave that question for some one else to answer.

Now, if this interview was conceived in good faith, why did Mr. Hubbell and Mr. Fearey desire to avoid Mr. Vail in Boston?

Common judgment would say that *he was precisely the man they would want to see.*

There is no evidence that they had seen him since the Gilsey House interview, and he was the man who made the bargain with them there, if their stories be true. And just here I want to call the attention of the Court to this little slip in hesitating Mr. Fearey's testimony respecting the Boston interview.

He was asked (p. 1204, l. 37) if he said one word to Mr. Forbes about the Gilsey House interview, and his answer was (p. 1205, l. 1), "The arrangement made with *Mr. Vail* at the Gilsey House" was gone over, etc.

If Mr. Frederick Fearey had had his way the litigation would never have been begun.

Now, they had had a long and unsatisfactory correspondence with Joseph P. Davis, a new man to them, on the subject of their new contract.

They got but little comfort from him, if their story be true.

He wrote to them repeatedly, but always carefully avoided mention of anything which might commit his Company to a renewal of their contract, if their story be true.

They knew all this time that Mr. Vail was the President of Mr. Davis's Company, and it takes a wonderful credulity to believe that their patience was not exhausted long before this, and they led into *complaining by letter to Mr. Vail* of Mr. Davis's ungracious conduct towards them, if the story be true that these references in all this correspondence to a new contract meant a renewal or a purchase.

We are asked to travel very far outside of all ordinary interpretation of conduct to believe that in the letters they *did* write to Mr. Vail now and then during this period they failed to refer to this renewal or purchase he had freely promised them at the Gilsey House, if their story be true.

And now they are going on to Boston, *and if there is any man on God's earth they would want to see, and to whom they would want to explain the difficulties which beset them, and, in turn, secure an explanation of the unreasonable conduct of Mr. Davis, and to find out whether so small a matter as a personal altercation between two men should stand between them and their bargained privileges, that man would be Theodore N. Vail.*

They would want to say to him, "Mr. Vail, you influenced us "into buying that Western Union plant by promises of a renewal of our contract, or purchase of our property at the end

“of our term. We were careless about having a matter of so great moment reduced to writing. We depended upon your word. We can get no satisfaction respecting our contract out of the Chairman of your Executive Committee, and he now threatens to let this miserable little quarrel between himself and our mild mannered Superintendent stand between us and the consummation of the bargain you *anxiously persuaded* us into at the Gilsey House, and we want to know if your influence as President of his Company cannot bring about a redemption of your promises upon which we relied.”

But no, they were going on to Boston with their topics of conversation, one of which was leveled directly and by name at Mr. Vail, and yet they didn't want to see Mr. Vail.

And when they found they must see him, that Mr. Forbes persisted in calling him in (p. 1120, l. 16), also (p. 1203, l. 19), they studiously avoided all reference to the Gilsey House interview in his presence, and declared to Mr. Forbes that the *negotiations* for a new contract *were commenced two months after that interview!*

You might hang a tramp on such testimony, but a dog, never!

Now let us look for a moment at Mr. Hubbell's topics of conversation.

He says (p. 1121, l. 34) he considered the interview quite important, and prepared for it by making his memorandum.

Where was the memorandum for the Gilsey House interview?

Was not that quite as important as this Boston interview?

He says (p. 1122, l. 36), that the subjects contained in the memorandum were all discussed at the interview, but when asked, “In the presence of whom?” he weakened very much, and answered (p. 1122 l. 38), “The first part of the interview was with Mr. Forbes alone, afterwards Mr. Vail came in,” and then he began to wander off on the subject of bogus telephones.

He says further (p. 1123, l. 13), “We had with us there all the letters on that subject introduced in this case as exhibits, and *they were introduced at that interview with Messrs. Forbes and Vail.*”

What did Mr. Hubbell mean by that?

Time and space forbid that all this testimony should be gone into with precision, but Mr. Hubbell has charged his testimony full of such expressions.

Did he mean to convey any other idea than that the letters were gone over by all the parties to the interview?

He says they were *introduced*.

To whom were they introduced?

Introduced by himself to himself?

No. No one can get away from the fact that he meant to deceive the Court into believing that a general conference was had, the letters read, and that Messrs. Vail and Forbes assented to his propositions and understandings.

Now let us see how he made out on that subject under cross-examination.

He was asked (p. 1146, l. 30) if he submitted his memorandum to Mr. Forbes.

He answered (p. 1146, l. 33): "*I don't remember showing that to Mr. Forbes.*"

"Q. Or to Mr. Vail?"

"A. Or directly to Mr. Vail."

On the subject of the letters he said (p. 1147, l. 37): "I know we used them in the interview—*the contents of them*—but whether I actually showed them to him (Forbes) or not, or read the contents of them, or whether I explained them only, I don't know." Further along (p. 1148, l. 7) he says he means to make the same answer apply to Mr. Vail as to Mr. Forbes.

Perhaps the Court may be able to find some path in which contradictions and stultifications do not lie, but the outlook seems exceedingly dark.

Mr. Forbes came on here from Boston and testified that he could not recall the interview at all—so little importance in his mind was attached to it.

Mr. Vail says respecting this interview (p. 601, l. 39): "Mr. Hubbell and Mr. Fearey after coming from Mr. Forbes, and after Mr. Forbes relating to me what they had claimed, I don't think they made any very strong claim to me that the Metropolitan Company had agreed with them for a ten years' contract, but did claim that there was some sort of an understanding between the Metropolitan Company and themselves, that the term should be for ten years, instead of the term mentioned in the contract of August 6th. In regard to this I told them that there was not such understanding to my knowledge, but that I would correspond with or see Mr. Davis in regard to it, and if he had made or had any such understanding with them, the matter would be taken up by me; that in any event it would have to be acted upon by the Metropolitan Company in its executive committee or board of directors, as no one had any authority to make any such contract. The private line contract was discussed, and they were given to understand that there never had been any question in my

"mind that if the Metropolitan Company had the private line right they were to have it from the Metropolitan Company. *The principal topic of conversation* between us though *was on the toll business*. There had been a good deal of friction and dispute in regard to that, and I remember that I was very emphatic with them in giving them to understand that that matter must be adjusted, and must be adjusted according to the terms of the contract of August 6th; there was some discussion in regard to the reduction of rentals; they asked for a five-dollar rate on the telephone; I did not understand that they claimed that they had any right to it; they asked for it on the ground that the rental of \$10 each was large and did not leave them sufficient margin for profit. I told them that that could not be considered. The interview did not last very long and, as I say, the principal part of the discussion was on the toll business, and in regard to that I gave them to understand that it must be fixed up, and that things must go on a little more pleasantly between the two companies."

Now, it will be observed that Mr. Vail told them no one had authority to make any contract without the action of the executive committee or board of directors of the Metropolitan Company, and this is very important when we come to look at the action taken by the Metropolitan Company on this subject of tolls a few days after this Boston interview.

And it will also be observed that Mr. Vail says that the principal topic of conversation was the toll business.

Mr. Hubbell says (p. 1126, l. 16) *that Mr. Vail is entirely mistaken*, and that the subject was not touched upon at all, and Mr. Fearey bears him out on page 1180, line 10.

Mr. Hubbell says further (p. 1126, l. 21): "There was nothing to talk about the toll matter for; *the toll matter was in perfect understanding at that time.*"

Now I know of no better way to ascertain if Mr. Hubbell's statement that the toll matter was in perfect understanding at that time be true than to read the letter first preceding and the letter first succeeding this interview passing between these companies.

There are others, but I will not take up the time of the Court in reading them,—these two being sufficient for my purpose.

The preceding letter is found on page 180 and is as follows:

"NEW YORK, March 23, 1882.

"In reply to yours of 22d inst.

"DOMESTIC TELEGRAPH AND TELEPHONE CO.,

"F. T. FEAREY, Esq., Secretary,

"Newark, N. J.

"*Dear Sir* :—Our auditor, Mr. Whitcomb, promises to prepare such a statement as you desire within two weeks.

"Can we not, however, arrange an equitable plan of division in advance of such a statement? As the principle of the division must be the same, whether the tolls in a given time and from any given point were \$100 or \$1,000. With a mutually satisfactory system adopted I could proceed to push the plans for the improvement and increase of the business, leaving the matter of dollars and cents to be adjusted by the financial department.

"Yours truly,

"C. H. BARNEY,

"*General Agent.*"

It can hardly be said that the toll matter was in perfect understanding at that time.

Now let us look at the letter next succeeding this Boston interview.

It is found on page 1068, and is as follows:

"NEW YORK, May 9th, 1882.

"DOMESTIC TEL AND TEL. CO., Newark, N. J.

"*Dear Sirs* :—Enclosed please find copy of memorandum of agreement as to tolls.

"Yours truly,

"CHARLES S. GAGE."

The memorandum referred to is found on the same page, and is as follows:

#### "MEMORANDUM OF AGREEMENT.

"The Metropolitan Telephone and Telegraph Company to agree to pay the Domestic T. & T. Co., and the latter to agree to accept as full compensation for performing all toll service, making collections, etc. (each company to make collections in its own territory), referred to in section sixth of original contract between the Bell Telephone Company of New York and the Domestic Company of Newark, twenty per cent. of the gross tolls on all business originating in Newark and passing outside; ten per cent. on the gross tolls of all business

“originating outside of the territory of the Domestic Co. and  
 “passing in; and ten per cent. on all business passing through  
 “Domestic Co. when switching is done, but nothing on busi-  
 “ness passing through by direct wire. And it is understood  
 “that in all cases when practicable, through wire shall be  
 “furnished. In consideration of these tolls the Domestic Co.  
 “agrees to furnish and maintain at its own expense sufficient  
 “wires to do all the business from its central office to the  
 “boundary of its territory. This is to include all business with  
 “all places in the territory of the Metropolitan Telephone and  
 “Telegraph Co. of New York, and operating under license  
 “from it. All parties agree to this as far as possible, and will  
 “recommend its passage to their respective boards.

“(Signed) T. N. VAIL, G. H. HUBBELL,  
 “J. P. DAVIS, F. T. FEAREY.”

So it would appear that there was some discord as to tolls up to at least May 9, 1882.

Now, on May 16, 1882, the Metropolitan Company wrote another letter to the Domestic on this toll business. It is found on page 1069, and is as follows:

“NEW YORK, May 16th, 1882.

“DOMESTIC TELEGRAPH AND TELEPHONE COMPANY, Newark,  
 “N. J.

“*Dear Sirs:*—At a meeting of the executive committee of the  
 “Company held yesterday, it, *by vote*, confirmed the arrange-  
 “ment as to tolls made by Messrs. Vail and Davis with your  
 “Messrs. Hubbell and Fearey, and embodied in a memorandum  
 “signed by them. A copy of this memorandum has been  
 “heretofore sent you by mail.

“Please inform us if the arrangement *is ratified by your*  
 “*board.* Yours truly,

“CHARLES S. GAGE,  
 “*Secretary M. T. & T. Co.*”

So your Honor will perceive that the subject of tolls was an open question up to May 16, 1882.

But this letter is of the utmost importance in showing how cautious and careful these corporations were in making contracts, and in bearing out Mr. Vail's reason of the Boston interview that no one had authority to make a contract until it was acted upon by the executive committee or board of directors.

The Metropolitan Company had the power absolutely and arbitrarily to fix the rates of tolls; but they preferred to have the corporate action of the Domestic Company also on that subject, so that there should be no doubt or uncertainty.

Now, I desire to follow this toll business one step further.

The Domestic Company took action upon it at their meeting of June 23, 1882. Their minute is found on page 279, and is as follows:

“The memoranda agreement made with the Metropolitan Telephone and Telegraph Company of New York and the New Jersey Telephone and Telegraph Company, was referred to the executive committee *with full power to act* and close the toll question, and make the best settlement they could.”

So your Honor will perceive again that this toll question was still unsettled up to June 23, 1882; and the declaration made by Mr. Hubbell that “the toll matter was in perfect understanding” on May 4, 1882, did not, to put it gently, rest upon the solid pedestal of truth.

Why did he inject that declaration in his testimony?

He must overcome Mr. Vail's testimony that the toll business was the chief subject of conversation, and so he struck out aimlessly and recklessly after something to corroborate him, but he struck something which put him in a position which none of his friends can enjoy.

Mr. Hubbell says (p. 1125 l. 19), that Mr. Vail promised he would write to the Metropolitan Company about this matter, and he redeemed his promise at once. That very day he wrote, and his letter is found on page 1292, and it is as follows:

“BOSTON, May 4th, 1882.

“JOSEPH P. DAVIS, ESQ.—METROPOLITAN TEL. AND TEL. CO.

“New York.

“*Dear Mr. Davis*:—Mr. Hubbell, President, and Mr. Fearey, Treasurer of the Domestic Co., have been here to-day to see Mr. Forbes, in regard to getting him to finish up the contract, which they stated was agreed upon between the Metro. Co. and the Domestic Co. of Newark, which was a new license covering both exchange and private line; extending the term to ten years instead of five, and arranging about the toll business; Mr. Forbes referred them to me; I told Mr. Fearey that I had always understood that they were to have the private line business, and that my understanding of the new con-



"tract was, that it was merely to be a license from the Metro.  
 "Co. to the Domestic Co. in place of the license from the Bell  
 "Co. to the Domestic Co.—this being perhaps advisable in order  
 "to conform to the license from the A. B. T. Co. to the Metro.  
 "Co. and to embrace the W. U. settlement; that I did not know  
 "anything about the ten years arrangement, that it had never  
 "been authorized to my knowledge by the Metro. Co., although  
 "it might have been talked about. I told him further in regard  
 "to the toll business that my understanding was that it had  
 "been impossible to arrange between the Metro. Co. and the  
 "Domestic Co.; owing to the fact that the officers of the Do-  
 "mestic Co. did not seem to care to settle upon any equitable  
 "basis. I stated that they should have the private line license;  
 "that in regard to the extension of the contract I would ascer-  
 "tain and let them know, although I did not think it could be  
 "made, and as to the toll business I would see if it could not be  
 "fixed. They also ask for a reduction in the rental of instru-  
 "ments. I informed them I did not think it possible; that the  
 "Metropolitan Company had given them a very valuable terri-  
 "tory, and that their proposal of \$5 for each set of telephones  
 "would not be in any way proper remuneration. As to the  
 "telephones leased by the Metro. Co. to the other New Jersey  
 "Co. I told them that the Metro. Co. received other and far  
 "more valuable considerations in addition to the telephone  
 "rental; I further stated that I should be in New York the first  
 "of next week and talk the matter over with you, telephone  
 "them and arrange for a meeting Tuesday.

"I write you this in order that you may know what is going  
 "on. They claim having letters from the Metro. Co. com-  
 "mitting that Company to all these things. Please have this  
 "correspondence looked up and put in proper shape so that we  
 "can examine readily.

"Yours truly,

"THEO. N. VAIL,  
 "Gen'l Manager."

Now there was testimony made up at the very day when the  
 interview occurred, and not subject to the lapse of so treacher-  
 ous a memory as Mr. Hubbell seems to have.

And what an exact corroboration it is of Mr. Vail's testimony  
 regarding the Boston interview, and what an exact contradic-  
 tion it is of Mr. Hubbell's testimony that the toll business was  
 not discussed at all, and that "the toll matter was in perfect  
 understanding at that time."

Can your Honor read this letter of Mr. Vail's and come to the conclusion that he had ever heard of any contract of renewal having its foundation upon the Gilsey House interview, or growing out of the purchase of the Western Union plant?

Mr. Hubbell says he got Mr. Forbes alone (p. 1122, l. 38)—

—Your Honor will recollect that he was in the habit of getting men alone—and he says (p. 1125, l. 30) he “entered into an explanation of the whole situation with Mr. Forbes, and gave the successive steps of our history from the time of the organization of the Company and the acquiring of the license to the Gilsey House interview and the organization of the Metropolitan Company and the negotiations and agreements to give us a ten year contract.”

Now, I wonder if that was true?

Mr. Forbes says he has forgotten all about it, and so we must rely upon Mr. Hubbell's testimony on this important subject, for I think he has not contradicted himself on this point.

Did your Honor ever get bored by some long story which some fellow persisted in telling about himself?

Well, I can imagine poor Mr. Forbes listening as long as his patience held out to the successive steps of the history of the Domestic Company, in which he had no interest, from the time of its organization to the acquiring of its telephone license and the Gilsey House interview,—and he had probably never heard of the Domestic Company until he received Mr. Hubbell's letter that he expected to be in Boston on May 4,—and I can imagine him listening to Mr. Hubbell's graphic description of the organization of the Metropolitan Company until he got sick, and then sending out for Mr. Vail to come in and take off the man who threatened to talk him to death, and then lying down on his sofa, weary and exhausted, and sleeping off all recollection of it forever.

Why didn't he detail all these things to Mr. Vail?

Mr. Forbes had no earthly interest in these successive steps of the Domestic Company.

His Company didn't deal with the Domestic Company, but they burdened Mr. Forbes with all these particulars, including the Gilsey House interview, and there was Mr. Vail in the adjoining office, and when Mr. Forbes, in sheer desperation, turned them over to him, they suddenly became as dumb as an oyster on the subject of the Gilsey House interview, and declared that “the negotiations for a new contract commenced immediately after the purchase of the Western Union plant with the Metropolitan Company.”

Mr. Vail not only wrote, but he acted very promptly.

He came on to New York, and he set on foot at once the settlement of the toll business in the manner indicated by the correspondence and memorandum I have read. And not only that, but he also set about at once to give the Domestic all that had ever been promised to them.

He came on to New York, as he said in his letter to Davis, and on May 17 he wrote the letter, found on page 585, as President of the Metropolitan Company, to the Domestic Company, giving them the right to private lines, carefully limiting their use to the end of their contract of August 6, 1879.

This letter I have already read.

The Domestic Company met on May 19, 1882, and stated in their minute, found on page 349, that a "Letter from the Metropolitan Telephone and Telegraph Company of New York, giving this Company the private lines for local purposes, was received."

Now we come to another red letter day in the annals of the Domestic Company.

They had a stockholders' meeting on May 22, 1882, eighteen days after the Boston pilgrimage.

John D. Harrison was there.

It don't happen to suit the Domestic case to have the minutes of this meeting state exactly what occurred, and so Mr. Hubbell generously informs us in his testimony (p. 316, l. 10) that "The minutes, of course, are a bare record of what occurred. They are not intended to include everything that was said at the meeting," and he got so afraid of the minutes of this meeting that he appealed to his counsel to save him from reading them.

Your Honor has undoubtedly noticed that the most of the Domestic documentary evidence found its way into this case upon our offer. The complainants had offered in evidence so much of this minute as suited their fancy *and their case*, and following Mr. Hubbell's notions respecting the clause of renewal, "we thought that under the circumstances" we would like to have the balance of this minute in evidence.

The complainants had offered this section of it (p. 315, l. 22): "Mr. Harrison delivered a very pleasing address on the future prospects of the telephone business, which showed a very brilliant and satisfactory outlook for shareholders."

The book says (p. 315) that this offer was by the defendants,

but it is a mistake—it should give the complainants credit for this performance.

The controversy between counsel respecting the introduction in evidence of the remainder of this minute is very interesting, and I will read it, beginning on page 326:

“Further cross-examination:

“Q. In this minute of May 22d, 1882, wherein Mr. Harrison delivered a very pleasing address, please read the whole of the minute, or the rest of the minute on page 130 of the book which follows that part of the minute already put in evidence.

“A. Well, I will read it under advice of my counsel.

“(Witness handed said book to Mr. McCarter.)

“By Mr. McCarter—The resolution which is a part of the minutes proposed to the witness to be read is objected to by the complainant’s counsel, upon the ground that it has no reference whatever to anything about which the witness was examined or cross-examined; that it is on a subject entirely different from that part of the minutes already put in, and has no connection therewith, and is irrelevant and immaterial to any issue in this cause.

“By ex-Gov. Bedle—Before transcribing it on the record, counsel asks whether the minute shows that the resolution that he is about to offer was introduced by Mr. Harrison right after he made his speech?

“The resolution was introduced by Mr. Harrison, but whether immediately after his speech or not, I don’t know.

“Q. It is the succeeding entry, isn’t it?

“A. Yes, sir.

“Q. Immediately succeeding the entry?

“A. It is the succeeding entry.

“Q. Now, then, will you read it?

“By Mr. McCarter—No, don’t read it.

“By the witness—I will not read it.

“By Mr. McCarter—Don’t read so that it will go on the notes. (To ex-Gov. Bedle: What do you propose to do with it, Governor?)

“By ex-Gov. Bedle—Put it on the notes.

“By Mr. McCarter—Complainant’s counsel objects to the resolution being put upon the notes, as he insists

“that it is not competent evidence in the cause and ought not to go on the record.

“By ex-Gov. Bedle—Counsel for the defendants insists that it is part of the same minute already offered in evidence by complainant, and has relation to the speech of Mr. Harrison.

“Q. Will you read it, or can I read it?

“A. I am advised not to read it.

“By ex-Gov. Bedle—Do you mean that?

“By Mr. McCarter—Certainly, so that it does not go on the notes. This putting of the minutes on the notes is a matter of convenience for counsel and parties, and where an exhibit is competent and proper, I have no objection to its going upon the record; I consider, however, that it is not proper for you to spread that resolution upon the notes. If you choose to make an exhibit of this minute, and have it marked subject to our objection, why it may go for what it is worth, but I don't think it ought to go on these notes.

“By ex-Gov. Bedle—I suppose a great many of the exhibits that have been put into these notes are objected to; it does not keep them out of the record; they have got to be printed somewhere, and either in the body of the case or somewhere else. I understand that we have been putting our exhibits in the body of the case for convenience' sake. There are letters and other papers offered on your part of the case that I might have objected to, and got them out of the record, on the ground that you are now stating, but I didn't do so. I don't offer this resolution for any captious purpose at all, and you can object to it if you want to, and have your objection taken down.

“By Mr. McCarter—I object to this going upon the notes as part of the testimony.

“By ex-Gov. Bedle—Well, it can be put there subject to your objection.

“By Mr. McCarter—I don't think the stenographer has a right to put anything upon his notes except testimony, unless it be by the consent of counsel, and he has no right to copy into his notes anything unless counsel agree upon it. I object to its being copied in the notes; it can be marked as an exhibit on your part, subject to my objection, and that is all I think you have a right to do about it.

“By ex-Gov. Bedle—I don’t see where we are going to  
 “run the line wherever objection is made to exhibits and  
 “objection is made to their going upon the notes; of  
 “course we cannot object to the papers being marked.

“By ex-Gov. Bedle—Well, I offer the minute in evidence.

“By Mr. McCarter—The minute is objected to for the  
 “reasons which have already been stated and placed on  
 “record.

“By ex-Gov. Bedle—I would like it to appear in some  
 “way what minute I offer.

“By Mr. McCarter—You can identify it by having it  
 “marked as an exhibit.

“By ex-Gov. Bedle—Then I offer in evidence the whole  
 “of page 139 of the book of minutes No. 2, of the Domes-  
 “tic Company. The same was marked as Exhibit D 25,  
 “No. , on the part of the defendants; September 12th,  
 “1885.

“By Mr. McCarter—Counsel for the complainant re-  
 “news his objection to the whole offer, upon the ground  
 “that a part of the minute is already in evidence in the  
 “cause and need not be re-offered, and as to the other  
 “part the first objection already made is renewed.

“Counsel for the defendants says that the complainant  
 “cannot offer one part of a minute in evidence and ex-  
 “clude the other counsel from offering other parts of the  
 “same minute having relation to the same subject matter.

“By ex-Governor Bedle—Now I offer also the whole  
 “minute of May 22d, 1882. This offer includes pages 138,  
 “139 and 140 of minute book No. 2, and the same was  
 “marked Exhibit No. D 26, on the part of the defendants ;  
 “September 12th, 1885.

“By Mr. McCarter—This offer is objected to except as  
 “to that part of such minute already put in evidence by  
 “the complainant for the reasons before given, and on  
 “the ground that no part of the said minute has any rel-  
 “evancy to the matters in controversy in this cause ex-  
 “cept the part put in evidence by the complainant.

“Q. After Mr. Harrison made his address at the meeting of  
 “May 22d, 1882, did he then offer the resolution to issue capital  
 “stock of your Company—five hundred additional shares of the  
 “capital stock of your Company, that is 500 additional to the  
 “500 shares then outstanding, and to have the same divided  
 “among the different stockholders?

“By Mr. McCarter—Counsel for the complainant objects to the question asking for testimony irrelevant to any issue in this cause, and as it relates to the private business of the company with which neither the public nor the defendants have any concern, he advises the witness not to answer the question unless he should be instructed by the Court to make answer to it.

“By ex-Governor Bedle—Counsel for defendants says that the complainant cannot offer in evidence a minute showing the part taken by Mr. Harrison and then undertake to prove by this witness what it had reference to, and the reason for it, and the particulars of it, and then exclude the defendants from showing what the true inwardness is, and to show that it is very different from what the witness has stated.

“Q. Now, I repeat the question, and ask the witness if he declines to answer it?

“A. I decline to answer it under the advice of my counsel.

“Q. Wasn't your capital stock by a resolution or vote of the stockholders at that meeting of May 22d, 1882—wasn't an additional number of shares amounting to 500 of the capital stock of your Company voted at that meeting May 22d, 1882, to be divided up among those stockholders, and wasn't that stock so issued and divided afterwards?

“By Mr. McCarter—Counsel for complainants objects to this question for the reasons given in his objection to the previous question, and gives the same advice to the witness in regard to answering it.

“Q. Do you decline to answer?

“A. Yes, sir.

“Q. Did Mr. Harrison receive from your Company soon after that meeting of the stockholders of May 22d, 1882, a sufficient number of shares of the capital stock of your Company to increase his holding of stock to 50 shares?

“A. I shall have to examine the stock ledger to answer that question.

“Q. Is it here?

“A. I think so.

“Q. Will you look and tell me?

“A. I can only answer that question by telling you what appears on the stock ledger.

“Q. Well, just tell us, if you please. You have already stated that Mr. Harrison had ten shares of stock when he was made

"a director ; now give us the date when that number of shares was increased first?

"A. He got ten additional shares on August 10th, 1880, according to the stock ledger.

"Q. Yes ; go on.

"A. October 4th, 1881, 5 additional shares.

"Q. Yes ; go on.

"A. June 1st, 1882, 25.

"Q. Yes ; any other holding?

"A. No.

"Q. Now I ask you whether that increase of 25 shares June 1st, 1882, were not received by him from the company as a stock dividend by a vote of the meeting of the stockholders of May 22d, 1882, right after he made his address?

"By Mr. McCarter—Counsel for the complainant makes the same objection to this question which he made to the two questions preceding the last one, and gives the same advice to the witness in regard to answering it.

"Q. Now I will ask you another question. You have stated in your direct examination, or it has been shown in your direct examination that the capital stock of your Company was increased from \$50,000 to \$100,000. Now, my question is, whether that increase from \$50,000 to \$100,000 was not made up by a stock dividend to the stockholders at the meeting of May 22d, 1882, being the same meeting to which you have referred?

"By Mr. McCarter—Complainants' counsel makes the same objection to this question, and gives the same advice in regard to answering it.

"Q. Do you decline to answer?

"A. I do.

"Q. Your capital stock is how much now?

"A. \$100,000.

"Q. \$50,000 of that was made up by this stock dividend, wasn't it?

"By Mr. McCarter—The question is objected to, and the same advice given as to its answering, and also the further objection is made to the question that this is a re-cross-examination on the matters in regard to which no re-direct examination of the witness was had.

"Q. When Mr. Harrison made that speech at the meeting of the stockholders to which we have just been referring, he didn't then say that he was a director in the Metropolitan Company, did he?



"A. I don't remember that he said it in that address, but he was giving us information that he could only know as a director of the Metropolitan Company.

"Q. Did he say anything about a stock dividend in his speech?

"A. I don't think he said anything about it; I don't remember.

"Q. Did he advise it?

"A. Well, he could not have advised it, because strictly speaking *there was no such thing done at the meeting.*

"Q. What; as a stock dividend?

"A. Well, in answer to your question, I say that I don't know whether he referred to that or not; I don't remember.

"Q. I heard you say that no such thing was done at that meeting. Do you mean to say that there was no stock dividend declared there?

"By Mr. McCarter—The question is objected to, and the witness is advised not to answer.

"Q. Why do you make that remark?

"A. I understand that under the advice of my counsel that question cannot be answered either.

"Q. You understand that the minute shows, as you have said in substance, that there was no stock dividend made at that meeting?

"By Mr. McCarter—What is that question?

"Q. Do you understand that the record shows, as you have said in substance, there was no stock dividend made at that meeting of May 22d, 1882?

"A. No, sir; I don't understand that it shows that. I don't understand that it contradicts in any way what was on the minutes.

"Q. Do you mean to have on record the statement that there was no stock dividend made at that meeting?

"By Mr. McCarter—Question objected to, and the witness is advised not to answer. The record shows what is on it.

"Q. You have no memoranda of what Mr. Harrison said at that meeting?

"A. No written memoranda.

"Q. What do you mean by that?

"A. Just exactly what I say.

"Q. Do you mean to say that in that speech he said anything about a stock dividend?

"A. I didn't say that. I said I didn't recollect it.

- “Q. You say that there was a meeting of the stockholders.  
 “What was that meeting called for?  
 “A. To consider the increasing of the capital stock of the  
 “company from \$50,000 to \$100,000.  
 “Q. Is that the whole of it?  
 “A. Well, if there was any other object to the meeting it  
 “was expressed in the minutes.  
 “Q. And to determine also how it should be paid?  
 “By Mr. McCarter—That last question is objected to  
 “and the same advice given to the witness.  
 “Q. The minute of January 27th, 1881, refers to a letter from  
 “Joseph P. Davis in reference to your contract; that minute  
 “has been offered in evidence; can you produce the letter re-  
 “ferred to in that minute, or tell us what it is?  
 “A. (Witness searches among his papers.) I cannot put my  
 “hand on it just now.  
 “Q. It must be just before January 27th, 1881?  
 “A. It is not in this scrap book.  
 “Q. Well, will you produce it?  
 “A. Yes, sir.  
 “Q. In your direct examination you were asked this question:  
 “‘Q. I call your attention to the increase of capital of the Do-  
 “mestic Telegraph and Telephone Company.’ ‘A. The devel-  
 “opment of the telephone business made it necessary for the  
 “company to increase its capital stock, and it was increased  
 “accordingly by article filed July 31st, 1880, to an authorized  
 “capital of \$100,000, which capital has been fully paid up in  
 “cash.’  
 “I did not ask you on your cross-examination before, any  
 “question with reference to that, because I supposed it was  
 “true as you stated it; on referring to the minute of May 22d,  
 “1882, to which reference has already been made, I find that  
 “there may be some mistake about that, and I therefore ask  
 “you whether the payment up of that increased capital stock  
 “was not made by a stock dividend among the stockholders of  
 “100 per cent.  
 “By Mr. McCarter—The question is objected to in its  
 “form, because it is an attempt, by indirect, to prove what  
 “complainant’s counsel considers to be irrelevant in the  
 “case. Complainant’s counsel does not object to a cross-  
 “examination of the witness as to the truth of his state-  
 “ments on his principal examination, that the \$100,000  
 “had been paid up in cash.  
 “Q. Now, will you answer the question?

" A. Yes, sir; please read the question.

" Q. (The question was read to the witness as follows): In your direct examination you were asked this question: 'Q. I call your attention to the increase of capital of the Domestic Telegraph and Telephone Company.' 'A. The development of the telephone business made it necessary for the company to increase its capital stock, and it was increased accordingly, by article filed July 31, 1880, to an authorized capital of \$100,000, which capital has been fully paid up in cash.' I did not ask you on your cross-examination before, any question with reference to that, because I supposed it was true as you stated it. On referring to the minute of May 22, 1882, to which reference has already been made, I find that there may be some mistake about that, and I therefore ask you whether the payment up of that increased capital stock was not made by a stock dividend among the stockholders of 100 per cent.?"

" A. *I say the capital was not so increased, but was, as I stated in my direct examination, paid in cash.*

" Q. I now repeat the question, *whether it was not paid by making a stock dividend*, and that that is the cash you refer to?

" By Mr. McCarter—The question is objected to on the ground that the witness has fully answered it.

" A. *I say no, it was not*, that the \$50,000 which represented the increase of the capital was represented by money, currency of the country.

" Q. I now repeat the question, whether when you say the capital stock was fully paid up in cash, it was not so paid by distribution of capital stock among the stockholders to the amount of the increase?

" By Mr. McCarter—The question is objected to as having been fully answered twice.

" A. It seems to me I have fully answered it, but I am willing to go further and answer it, so that there cannot be any possibility of mistaking it. As I understand your question—I will state it in this way—do you mean that the stock was issued—to ask me—that this stock was issued and distributed among the different stockholders without its equivalent par value having been paid in cash to the company? Do I understand you to ask me that?

" Q. I ask you, just as I do ask you, and repeat the question: 'I now repeat the question, whether, when you say the capital stock was fully paid up in cash, it was not so paid by distribution of capital stock among the stockholders to the amount of the increase?'

"By Mr. McCarter—The question is further objected to  
"as unintelligible.

"A. *I would say that this was not a stock dividend in the  
"strict sense of the term. It was a capitalization of the surplus  
"of the company, which had been earned by the company in cash ;  
"that was a surplus which was to be represented, and was rep-  
"resented by this transaction—by a capitalization of that sur-  
"plus.*

"Q. And stock equivalent to that surplus was issued?

"A. Yes, sir; but that was represented—(interrupted).

"Q. Which made up the increase?

"A. But that was represented by actual cash which had been  
"received and expended by the company in construction.

"Q. And that answer of yours then shows that you mean by  
"the expression that this increase of capital had been fully paid  
"up in cash, does it?

"A. Yes, sir, and also explains my expression that strictly  
"speaking it was not a stock dividend. That is, it was not a  
"watering of the stock.

"Q. No, I did not mean to say that.

"A. I understand you to be insinuating that all along.

"A. No, I never meant to insinuate it was a watering—it was  
"a capitalization, as you put it, of the surplus earnings of the  
"company?

"A. That is the true way to put it.

"Q. Was that ordered at the meeting of May 22, 1882, to  
"which I have referred?

"By Mr. McCarter—The question is objected to and the  
"witness is advised not to answer it for reasons heretofore  
"given."

What was the matter of these minutes which such a des-  
perate effort was made to smother out of this case?

They are found in full on page 1341, and are as follows:

"SPECIAL MEETING OF STOCKHOLDERS.

"792 BROAD STREET, Monday, May 22, '82.

"This meeting was called for the consideration of issuing  
"certificates of stock to the amount (to the amount) of one  
"hundred thousand dollars as authorized by certificate filed  
"August, 2, 1880, in the office of Secretary of State at Trenton,  
"N. J.

"Mr. George W. Hubbell chosen as Chairman and F. T.  
"Fearey as Secretary.

" Called to order at 12.30 P. M.

" The chairman explained the object of the directors in having the meeting called, also of the liability of each stockholder.

" Mr. Harrison delivered a very pleasing address on the future prospects of the telephone business, which showed a very brilliant and satisfactory outlook for shareholders.

" Resolution offered by Mr. Harrison:

" *Resolved*, That five hundred shares of stock additional to the five hundred shares now outstanding be issued by the Domestic Telegraph and Telephone Company to the present stockholders *as a stock dividend* in accordance with the recommendation of the board of directors at a meeting held at 792 Broad street, Friday, May 19th, '82.

" Accepted by over two-thirds in interest who were present.

" Mr. Kinney thought it would be best to have every shareholder sign before issuing certificates.

" Certificates to be ready by the 1st of June, and signatures to be given under date of May 22d when delivered.

" Mr. F. Frelinghuysen moved that we adjourn 1 P. M.

" F. T. FEAREY, *Secretary*."

The meeting was called for the consideration of issuing certificates of stock to the amount of \$100,000, as authorized by certificate filed August 2, 1880, in the office of Secretary of State.

Nothing the matter with that.

The meeting was called to order at 12.30 P. M.

No reason why they should not be particular to state the precise moment when they were called to order.

The Chairman, Mr. Hubbell, explained the object of the directors in calling the meeting and also the liability of each stockholder.

No objection to Mr. Hubbell airing his knowledge of the law a little, if he saw fit. Lawyers are quite apt to "cast an anchor to the windward" when capitalists are standing round loose and are likely to have some law business to transact.

Mr. Hubbell was quite right in that.

And then, as on many other occasions, John D. Harrison was promptly given the floor.

What a great man he was among them!

And then the minute says, "he delivered a very pleasing address."

They didn't want any eloquently finished address to touch

their intellectual being, or they would have called upon a Kinney or a Frelinghuysen.

But they wanted a pleasing address to touch their treasury, and so they called upon John D. Harrison, whose business capacity stood far ahead of them all.

Without his sound business judgment they would never have bought the Western Union plant; they would never have prospered in their business; they would never have had money enough in their treasury to carry on a litigation in the court for the trial of small causes.

Now their minute shows that "Mr. Harrison delivered a very "pleasing address on the future prospects of the telephone business, which showed a very brilliant and satisfactory outlook "for shareholders."

Now the average individual, without knowing that Mr. Harrison had an interest in another company than the Domestic, would say that his pleasing address was very general in its reference to the telephone business; and the individual who does know that Mr. Harrison was interested elsewhere, needs rather more information than Mr. Hubbell's correction of this minute, which don't happen to suit him, to believe that Mr. Harrison's remarks referred exclusively to the future prospects of the Domestic business, which showed a very brilliant and satisfactory outlook for Domestic stockholders.

Now, I have no objections to urge against Mr. Harrison's pleasing address as interpreted by the ordinary rules of interpretation; but I do object to the peculiar species of Domestic legerdemain which seeks to make it mean anything to suit their case.

No doubt Mr. Harrison considered the outlook bright for Domestic shareholders as well as others. For he had seen the Domestic Company prosper and flourish as a green bay tree since they had acted on his advice in purchasing the Western Union plant.

He knew that instead of giving notes to meet their obligations, they had a large surplus in their treasury, after a monopoly of less than two years, and that with a rapidly growing business, and more than two years of their contract yet to run, and the same abiding faith in their renewal under their eleventh clause that all the rest of them had, and for which our friends struggled so manfully and so confidently in this Court and the Court of Errors under the bill as originally filed; I say that with all these considerations before him John D. Harrison moved:

“That 500 shares of stock additional to the 500 shares now outstanding be issued by the Domestic Telegraph and Telephone Company to the present stockholders *as a stock dividend* in accordance with the recommendation of the board of directors at a meeting held at 792 Broad Street, Friday, May 19, 1882.”

And his resolution was accepted by over two-thirds in interest who were present—as the minute shows:

“Mr. Kinney thought it would be best to have every shareholder sign before issuing certificates. Certificates to be ready by the 1st of June, and signatures to be given under date of May 22d, when delivered.

“Mr. F. Frelinghuysen moved that we adjourn 1 P. M.

“F. T. FEAREY,

“*Secretary.*”

Now, what was the matter of this minute which both Mr. Hubbell and his counsel struggled so hard to keep out of this case after they had offered the part of it that seemed to suit their side?

They could not say it was immaterial, for Mr. Hubbell had introduced two letters which he had declared were immaterial, but were merely to make things connect, and surely this minute made things connect. And it makes some things disconnect.

It disconnects from the truth Mr. Hubbell's statement that no such thing as a stock dividend was declared at that meeting.

It disconnects from the truth the statement which he deliberately incorporated eighteen days previously into his Boston topics of conversation that “the present profit of the telephone department about pays for keeping up the repairs of lines and construction in the natural growth of the business.”

It disconnects from the truth the statement they made to Mr. Vail at Boston only eighteen days before, in order to get a reduction in rentals, that their present rate was large, and did not leave them sufficient margin for profit.

These are serious and sad disconnections, but they fully account for the frantic appeal made by Mr. Hubbell to his counsel to save these minutes from the record.

This minute connects the Domestic Company directly with the fact that they had paid their notes given for the purchase of the Western Union plant; had expended their money in doing away with the Western Union system of service so far as

it conflicted with their own, by putting an additional wire for each subscriber; had paid all their heavy running expenses (I don't know if they had paid any counsel fees); had paid how many dividends we don't know, and had a surplus in their treasury, how large we don't know, but large enough to draw upon it for a stock dividend of \$50,000.

Here was the rub against the introduction of this minute.

All this they had accomplished in less than two years, and they had two years and three months of still greater prosperity before them; and it effectually takes out of their case all the claim of hardship they had been arguing would be done them if they were held to the contract they had deliberately entered into.

Now your Honor will remember that under the terms of the contract of August 6, 1879, the licensor company reserved the exclusive right of establishing intercommunication between the Domestic district and surrounding districts, and also the right of fixing the rates of tolls for such intercommunication if it were established.

This intercommunication was established between the Bell Telephone Company of New York and the Domestic Company. At the outset it was of very little importance.

So unimportant in fact that for a year or two each party retained all the tolls it received for its own service; but the business grew as all the other business connected with the telephone business had grown (excepting perhaps the private line business in Newark), and it became quite important that some basis or adjustment of the tolls between these two companies should be agreed upon.

The subject had provoked some little confusion between these two companies; but on the 9th day of August, 1882, the Metropolitan Telephone and Telegraph Company, to which the Domestic Company had assented to the transfer of their contract, acting upon the right reserved to them in the contract of August 6, 1879, and in amplification of the memorandum agreed upon shortly after the Boston interview, which I have already read, prepared and submitted to the Domestic Company, a contract covering this question of tolls between these two companies.

Mr. Hubbell gives a very interesting account of some performances relating to and ante-dating this contract, in which he says (p. 181, l. 4) that he had an idea, and very freely "expressed it that the New York and New Jersey Com-



pany, as far as the territory they controlled in New Jersey, had a perfect right to make any arrangement about the tolls"—apparently forgetting that under their contract of August 6, 1879, the Metropolitan Company expressly reserved that right; and he gives an account of some meetings held on this subject of tolls, before the contract of Aug. 9, 1882, was executed, at which he says (p. 184, l. 37) John D. Harrison was present as President of the New Jersey Company, but in his peculiar methods of giving testimony, he probably failed to recall the fact that the New Jersey Company was not incorporated until Aug. 28, 1882. (Hubbell's testimony, p. 319, l. 19.)

John D. Harrison was a very handy sort of man to have in the directory of the Domestic Company.

This statement of Mr. Hubbell gives him five distinct characters: Domestic director, Bell director, Metropolitan director, Metropolitan District director, and President of the New Jersey Company,—almost as many as Pooh-Bah in the Mikado. He was five distinct shows combined into one.

Whenever the Domestic wanted him, he was *their* director.

When they didn't want him they scattered him around among the other corporations—some of them not yet formed—as best suited their case, regardless of the consequences to him.

After much fuss and feathers on the part of Mr. Hubbell to get some one who had no authority to make a toll contract, the Metropolitan Company exercised their right and made one, which Mr. Hubbell says (p. 187 l. 29), "they forced on us, and "before it was signed it was the subject matter of great resistance and protest on our part, without avail, and the request "to sign it was so peremptory and threatening that we thought "best to give in and sign it, thinking that the New Jersey "Company would be able to protect themselves and see if they "had any independent rights in the State of New Jersey."

How very solicitous he was of the rights of the New Jersey Company!

Further along he says (p. 190 l. 2), "An examination of this "contract would develop the fact that the tolls were entirely "different to those agreed upon between myself and General "Barney."

I wonder if an examination of this contract signed by the Domestic Company would not develop something more serious for the Domestic Company than a difference in tolls?

The contract is found on page 188, but I won't stop to examine any more of it than the fifth clause, on page 189, which is as follows:

"Fifth—This agreement shall continue in force until the termination, by lapse of time or in any of the ways therein provided, of said contract made by and between the Bell Telephone Company of New York, and the Domestic Telegraph Company of Newark."

The first section of this contract recognized in words the existence, force, and effect of the Domestic contract of August 6, 1879, and there is no intimation contained anywhere in this toll contract that any of the terms of the contract of August 6, 1879, had been departed from or varied in any way whatever.

Mr. Hubbell in his testimony makes no pretense that the resistance and protest on the part of his Company against the execution of this contract, was on account of the variation of the terms of the contract of August 6, 1879, secured at the Gilsey House interview.

The only cause of his great resistance and protest as developed in his testimony is that the tolls are entirely different to those agreed upon between General Barney and himself; and I think Mr. Hubbell's objection at the present time to this toll contract of August 9, 1882, is found in the fact that it is a distinct and explicit acknowledgment by the Domestic Company of the full force and effect of the contract of August 6, 1879.

Now, I have briefly called your Honor's attention to the fact that on October 1, 1881, the Metropolitan Telegraph and Telephone Company, seeing the necessity of having the business outside of the city of New York conducted by local companies and developed more rapidly than they could develop it, made a contract of that date with the Metropolitan District Telephone Company for the purpose of promoting that end.

Mr. Hubbell and his Company, as has already been seen, heard of this company really before its actual organization, for on *Sept. 29, 1881*, they met (p. 345) and discussed the position of the Domestic Company with respect to the Metropolitan District Company.

The *testimony* of the complainants in this case has laid no iniquity whatever at the door of this Metropolitan District Company.

No charge has been made in the *testimony* that this Metropolitan District Company ever stood in the way of the execution of this ten year contract which Mr. Gage, when he was alone, exhibited to Messrs. Hubbell and Fearey, but which was so choice that he would not even let them take it in their hands.

Your Honor will remember that Mr. Hubbell's story No. 1 assigned (pp. 173 and 174) as the reason why that contract was

never executed, that the Domestic Company rejected even the idea of receiving it, *because it contained no covenant of renewal beyond the term of ten years*; and on the very same page (p. 174) Mr. Hubbell's story No. 2 assigned "*that personal and rather violent altercation*" between Superintendent Grinstead and the mild-mannered Jabez Fearey, *as the real reason why it was never executed*.

Now, that was a clear case of *Hubbell vs. Hubbell*.

When Mr. Young came to this branch of the case, on the argument, he was, of course, in a quandary which of these two opposing theories to accept, and what did he do?

Why, he boldly rejected both of them as unworthy of credit, and put forth a bran new theory of his own, that the reason why the Metropolitan Telephone and Telegraph Company would not execute the ten year contract with the Domestic was, *that they found they could make more money in some other way*, and that this Metropolitan District Company was the agency to accomplish that purpose.

That was a clear case of *Young vs. Hubbell*.

After Mr. Young had developed his new theory, and amplified it to his satisfaction, he proceeded with his argument, but before he got through he asked the Court to make a decree for the complainants, because the Domestic Company was the best and most profitable feeder the Metropolitan Company had, and he produced and submitted a mathematical calculation to show that this claim was true, but it was directly antagonistic to his former theory that the Metropolitan Company desired to get rid of the Domestic because they could make more money in some other way.

Here was a clear case of *Young vs. Young*.

"Here's a pretty state of things."

The Metropolitan District Company, whose operations were limited to two years, went to work developing the outlying territory and organizing the local exchanges and companies.

By October 2d, 1882, the New Jersey territory was so far developed that it was ready to be turned over to the local company to which it was proposed to entrust it—that company being the New Jersey Telephone Company.

On this date, October 2, 1882, the Metropolitan District Telephone Company made an assignment to the New Jersey Telephone Company, which I will read from page 84:

"KNOW ALL MEN BY THESE PRESENTS, That the Metropolitan District Telephone Company of the city of New York, a

"joint stock association under the laws of the State of New  
 "York, party of the first part, for and in consideration of the  
 "sum of one dollar, and of other valuable considerations, and  
 "of *Fifteen thousand nine hundred and thirty* (15,930) *shares of*  
 "the capital stock of the New Jersey Telephone Company, to it  
 "on hand paid and delivered at or before the ensealing and de-  
 "livery of these presents by the New Jersey Telephone Com-  
 "pany, party of the second part, the receipt whereof is hereby  
 "acknowledged, have bargained and sold, and by these pres-  
 "ents doth grant, convey and transfer unto the said party of  
 "the second part, its successors and assigns, all its business and  
 "good will of business, and telephone properties of every kind,  
 "nature and description of the said party of the first part (in-  
 "cluding all the properties, rights and privileges granted and  
 "conveyed by the Metropolitan Telephone and Telegraph Com-  
 "pany of the city of New York by instrument, dated as Octo-  
 "ber 1st, 1881), situate within or appertaining to the territory  
 "of the party of the second part, subject, however, to all the  
 "burdens, duties, obligations and limitations imposed upon it  
 "by the said instrument, to have and to hold the said proper-  
 "ties, and every of them hereby sold and conveyed, or intended  
 "to be sold and conveyed, unto the said party of the second  
 "part, its successors and assigns forever, free and clear of all  
 "debts of said party of the first part, as of October 1st, 1882,  
 "except the debt hereinafter mentioned and assumed by the  
 "party of the second part, and subject as aforesaid.

"And the said party of the second part in consideration of the  
 "premises and other valuable considerations, hereby assumes  
 "and agrees to pay to the Metropolitan Telephone and Tele-  
 "graph Company the indebtedness of the party of the first part  
 "to it not exceeding thirty-four thousand three hundred and  
 "nine and  $\frac{42}{100}$  dollars (\$34,309.42) and also to assume, keep, ob-  
 "serve and perform all the burdens, duties and obligations im-  
 "posed upon the party of the first part by the aforesaid instru-  
 "ment bearing date as of October 1, 1881.

"In witness whereof, the parties to these presents have  
 "caused the same to be subscribed by their respective presi-  
 "dents and secretaries thereunto duly empowered, this 2d day  
 "of October, 1882.

"THE METROPOLITAN DISTRICT TELEPHONE COMPANY,

"BY W. H. WOOLVERTON, *President*.

"A. S. DODD, *Secretary*.

"THE NEW JERSEY TELEPHONE COMPANY.

"[SEAL.] JOHN D. HARRISON, *President*.

"A. S. DODD, *Secretary*."

Again, on this same date, October 2, 1882, the Metropolitan Telephone and Telegraph Company made a contract with this New Jersey Telephone Company for the occupation and operation of this New Jersey territory. I will read from 85.

“ This memorandum of an agreement made this second day of October, A. D. 1882, by and between the Metropolitan Telephone and Telegraph Company, a corporation formed under the laws of the State of New York, of the first part, and the New Jersey Telephone Company, a corporation created under the laws of the State of New Jersey, of the second part;

“ Witnesseth, whereas said second party desires to have the license hereinafter named from the first party, and said first party has agreed to grant the same,

“ Now it is agreed as follows, that is to say:

“ 1st. Said first party agrees that it will, for the considerations and upon the terms hereinafter named, forthwith execute to and with said second party the license contract hereto annexed, marked C.

“ 2d. Whereas, it has been agreed that said first party, in consideration and as a condition of the grant of said license, shall (*in addition to the rentals, royalties and other payments therein provided for*) be entitled to and have one-third interest in all and singular, the property, rights, business and profit of said second party.

“ Now, said second party for the accomplishment thereof shall,

“ (a) Forthwith upon the execution hereof, furnish and pay to said first party *eight thousand shares of its capital stock, being one-third thereof as the same now stands fixed; and*

“ (b) *Shall further, from time to time if and whenever an increase in the amount of its capital stock shall be made, furnish and pay to said first party one-third part of such increase.*

“ (c) *All the stock so to be paid to said first party to be lawfully issued, full paid, and not subject to any assessment or contribution.*

“ 3d. Whereas, certain telephones, a list of which is annexed, marked D, have heretofore been put out for various uses in the territory covered by said license contract by said first party, or under rights from it—all which said telephones are the property of the American Bell Telephone Company—said second party shall take possession of said telephones and shall hold the same, but as the property of the American Bell Telephone Company, under the license contract herein agreed

“to be given, with like effect as if actually furnished there-  
 “under, except that rentals and royalties thereon shall begin  
 “at the date of said license contract.

“4th. And whereas, the Bell Telephone Company of New  
 “York did make a certain license agreement with the Domes-  
 “tic Telegraph and Telephone Company, then called the Do-  
 “mestic Telegraph Company of Newark, New Jersey, dated  
 “August 6, 1879; and whereas the Bell Telephone Company  
 “did, by a contract dated the 30th day of April, 1880, among  
 “other things, agree with the Metropolitan Telephone and Tel-  
 “egraph Company touching said license agreement in the  
 “words and figures following, that is to say:

“ ‘Whereas, the Bell Telephone Company of New York has  
 “ ‘made license agreements with the Law Telegraph Company  
 “ ‘of New York, and with the Domestic Telegraph Company of  
 “ ‘Newark, New Jersey, dated, respectively, January 9, 1879,  
 “ ‘and August 6, 1879, and it is agreed that the said new com-  
 “ ‘pany shall have all the interest and benefit of said Bell Tel-  
 “ ‘ephone Company of New York in both said agreements, the  
 “ ‘said Bell Telephone Company of New York hereby agrees  
 “ ‘that it will assign to and vest in the new company all its  
 “ ‘right, title and interest in both said agreements; and will,  
 “ ‘if possible, procure in proper writings, the assent to and  
 “ ‘confirmation of said assignment by both said companies,  
 “ ‘and also their agreement to place under the contract of No-  
 “ ‘vember 10, 1879, the territory and instruments covered by  
 “ ‘their said license agreements, respectively; and until such  
 “ ‘efficient and valid legal transfer is made the Bell Telephone  
 “ ‘Company of New York, will hold the said agreements and  
 “ ‘all its interest in and benefit of the same to the use and for  
 “ ‘the benefit of the new company. But the new company  
 “ ‘shall not be bound to assume the position or obligations of  
 “ ‘the licensor under either of said agreements, nor shall either  
 “ ‘of said sub-licensees have any benefit under the contract of  
 “ ‘November 10, 1879, until they, respectively, and in writing;  
 “ ‘agree to place their license rights and the territory and in-  
 “ ‘struments held by each, by virtue of said license contracts,  
 “ ‘respectively, under the contract of November 10, 1879, nor  
 “ ‘until the National Bell Telephone Company or its nominees  
 “ ‘shall take and pay for the exchange plant and telephone  
 “ ‘property of the Western Union Telegraph Company within  
 “ ‘the territory of said Domestic Company upon the terms ex-  
 “ ‘pressed in the contract of November 10, 1879. And upon  
 “ ‘the confirmation by said Domestic Telegraph Company of

“ the assignment of said agreement by the Bell Telephone  
 “ Company of New York to the new company, and upon the  
 “ submission by the Domestic Telegraph Company of its terri-  
 “ tory and instruments to the terms of the contract of Novem-  
 “ ber 10, 1879, all as above provided, the territory covered by  
 “ said agreement of August 6, 1879, shall be held to be har-  
 “ monized under and subject to the contract of November 10,  
 “ 1879.’

“ Now it is agreed that the second party shall have, and the  
 “ first party hereto hereby assigns and sets over to the second  
 “ party, all the right, title and interest, and benefit of the first  
 “ party hereto of, in, to, and under said license agreement with  
 “ the Domestic Telegraph and Telephone Company, whether  
 “ under or in pursuance of said agreement with said Bell Tele-  
 “ phone Company of New York or otherwise, however—subject,  
 “ however, to the burdens and obligations resting on the first  
 “ party hereto under the same.

“ It being, however, expressly understood and agreed that at  
 “ the expiration of the present term of said license agreement,  
 “ to wit, on the first day of September, A.D. 1884, the territory  
 “ covered thereby shall come under the license contract hereto  
 “ annexed, and be merged with the territory covered thereby,  
 “ unless by the terms thereof said Domestic Telegraph and Tel-  
 “ ephone Company shall have the right to compel and shall  
 “ compel an extension or renewal thereof, in which event said  
 “ territory shall, upon the expiration of such extension or re-  
 “ newal, come under the license contract hereto annexed *and be*  
 “ *merged with the territory covered thereby.*

“ In witness whereof, the parties have caused their corporate  
 “ seals to be hereto affixed, and their corporate names to be  
 “ hereto subscribed by their proper officers, the day and year  
 “ first above written.

“ THE METROPOLITAN TELEPHONE AND TELEGRAPH COMPANY,  
 “ [SEAL.] By JOSEPH P. DAVIS, *Vice-President.*

“ Attest:

“ C. S. GAGE, *Secretary.*

“ THE NEW JERSEY TELEPHONE COMPANY.  
 “ [SEAL.] JOHN D. HARRISON, *President.*  
 “ A. S. DODD, *Secretary.*”

Mr. Young tells us in his argument that these words, “ extension ” and “ renewal,” had their origin at the Gilsey House interview, and that the draughtsman of this contract had this

interview and the origin of these words in mind when it was prepared.

Is not that rather desperately far-fetched? Suppose I lease a farm for one year without any conditions whatever for further tenure.

When the year is about to expire do I not go to my landlord and ask him for a *renewal* of my lease?

Illustrations like this might be multiplied indefinitely, but is not that precisely the expression every business man and every lawyer would use under the circumstances? And I will show your Honor that our Domestic brethren used precisely this word "*renewal*" *when they made their application under the eleventh clause of their contract*, and that, too, *before* they had received any letter which had suggested, or misled them on the subject of merger.

No; the Metropolitan Company didn't incorporate in any of their writings anything which dropped at the Gilsey House from the lips of Mr. Hubbell and the two Feareys; and neither did the Domestic Company until they were in extremity and peril with their suit; and besides, a careful investigation of the language of Mr. Hubbell and the two Feareys respecting the Gilsey House interview demonstrates that neither of these words "extension" or "renewal" was used by any of these gentlemen on this occasion.

On the same day (October 2, 1882) the Metropolitan Telephone and Telegraph Company gave a perpetual license to the New Jersey Telephone Company for the use of telephones in all the district in New Jersey included in the thirty-three mile radius—excepting the Domestic district.

This license is found on page 88, and as it is quite voluminous I will read only such portions of it as are applicable to this controversy.

The sixth clause provides (p. 90, l. 19), "the rights hereby granted shall be perpetual unless determined as herein provided, and shall extend to any lines wholly within the following described territory, namely: All that portion of the territory of the first party which lies in the State of New Jersey, except that licensed to the Domestic Telegraph Company of Newark, N. J., now called the Domestic Telegraph and Telephone Company, by contract dated August 6, 1879."

This license further provided (p. 93, l. 21), "that the New Jersey Company should pay to the Metropolitan Company a rental or royalty, at the rate per instrument of seventy per cent. of the telephone rental and royalty fixed by the Ameri-



“can Bell Telephone Company (being a discount of thirty per cent.).”

The license further provided (p. 93, l. 33), “that the rates as then fixed were as follows:

“Battery transmitter, each instrument per year, \$10.

“Magneto telephones, each instrument per year, \$10.”

This license further provided (p. 98, l. 29):

“21st. On all telephones furnished to the Domestic Telegraph and Telephone Company of Newark, New Jersey, by the second party hereto, for use in the territory covered by a certain license agreement made by the Bell Telephone Company of New York with it, said Domestic Telegraph and Telephone Company, there called the Domestic Telegraph Company, said second party shall, until the expiration of the present term of said license agreement, pay to the Metropolitan Telephone and Telegraph Company full rental and royalty without discount, at the rates at present or hereafter from time to time fixed, as provided in article 12 hereof.”

I know of no clause in any contract or in any law which could or would prohibit the making of these contracts or the execution of this license.

Keeping always in mind the fact that the Domestic Company had no rights except as a mere local exchange, the Metropolitan Telephone and Telegraph Company had the right to dispose of the remainder of their New Jersey territory to whomsoever and howsoever they saw fit. They exercised this right and turned over this field upon the terms of these contracts to the New Jersey Telephone Company, and they had not only the right to make this contract but to make a contract with the New Jersey Company that unless the Domestic Company could and should compel a renewal or extension of its contract its territory should at the termination of its contract be merged with the surrounding territory into the New Jersey Company.

And if at the expiration of the Domestic contract the Metropolitan Telephone and Telegraph Company saw fit either to operate this district directly or to merge it into some other district the Domestic contract was at an end, unless by some operation of the law with which they were not familiar—and which they carefully guarded against—the Domestic Company could and should compel a renewal.

Is not this a plain, clear case of merger contemplated by the eleventh clause of the contract of the Domestic Company?

How could a merger like that here contemplated have been accomplished in any other way?

The contract says the Domestic license should be at an end, (1) if the licensing company saw fit to operate the district directly itself, or (2) if the licensing company saw fit to merge it, *not into its own district, "but into some other district."*

If the false construction which the complainants seek to put upon this eleventh clause, i. e., that the Domestic license should be at an end if the licensing company saw fit to operate the district directly, or to operate it as merged with their own territory, is to prevail, then the words of the clause "or to merge it into some other district" are faulty, superfluous, and meaningless, and must be expunged; and they ask a court to go to very great extremes to blot words from this contract, which are plain, simple, intelligible, and effective, in order to sustain a case which has sought to be supported by a suppression of evidence, and by testimony which rests so largely upon a very perilous foundation.

And were not the rights of the Domestic Company as thoroughly extinguished by this merger as they would have been by the act of the Metropolitan Company operating this district directly by itself?

They say they were deceived on merger, as an excuse for amending their bill.

If that be true, then they were bound in equity *to amend as soon as undeceived.*

This bill was filed on August 27, 1884.

A rule to show cause was allowed and a few days later the answer was filed, and it revealed the defense.

Did it make merger the only defense?

Not by any means.

The answer explicitly says (p. 39, l. 5), "that paragraph 11, of "the contract of August 6, 1879, under which the complainant "claims a renewal of said contract or a further license, *is not "binding as a contract, or of any legal force, and is not enforceable in equity or in law, and this Court can make no decree to compel a specific performance of the same."*

Now, they were undeceived, and then they were equitably bound to amend *at once*, if at all.

They did not do so, although Mr. Hubbell says, practically, that the answer conveyed him some idea of the defenses to be interposed.

He was asked (p. 293, l. 16):

“Q. What first revived your recollection of this interview at the Gilsey House?

“A. Well, it was—the first thing was the line you took in your argument.

“Q. On what?

“A. On the rule to show cause why an injunction should not be granted before Vice Chancellor Van Fleet.

“Q. That was the first argument?

“A. That, *coupled with the exhibits which you filed with your answer.*

“Q. What particular thing in my argument recalled the interview to your mind?

“A. Because, in answer to our application for a renewal of our license, or for a continuance of our license, the reason that was alleged by the two companies was that they were going to merge our territory into some other territory which they claimed was the course contemplated by article eleven, and therefore we could not go on, but your argument took the line that it was a contract that was not susceptible of specific performance, because the terms upon which such renewal was to be made were not fixed: in other words, you shifted the ground which I supposed these companies stood upon.”

This argument to which Mr. Hubbell refers was made on October 23, 1884.

So he had notice by the answer and notice by the argument, that the defense in this case was going to be, and in fact was, very much farther reaching than merger, and yet he never gave notice of an application to amend until nearly three months after the argument—on January 14, 1885.

That Gilsey House interview needed a great deal of dressing up to make it fit for introduction into this case, and I guess after all it found its way in without having on a wedding garment.

They charge us with a contrivance to defraud them of their contract and of their business.

A contrivance, your Honor, would have been for the Metropolitan Company to have distinctly excepted the Domestic territory from their contract with the New Jersey Company and then, when the Domestic contract expired, for the Metropolitan Company to come in here and operate this territory directly for a few days, or until the Domestic Company was dead beyond hope of resurrection, and then turn it over to the New Jersey Company. Contrivance, is it?

Not a line or a word in any of these contracts breathing an in-

timation of a contrivance ; but, on the contrary, every one of them drawn without consultation with the Domestic Company, and yet dealing fairly and squarely with the rights of that company.

It comes with a poor grace in the face of the circumstances under which this bill was amended; and the miserable farce of the Gilsey House interview; the legerdemain sought to be practiced on the letter of January 11, 1881 ; and the sneaking visit to Boston on May 4, 1882, to talk about contrivances in this case.

They saw the frailty of their contract and of their case when the argument on their original bill was made ; and they were thoroughly convinced of it when Vice Chancellor Van Fleet gave his opinion, and then they saw the absolute necessity of getting rid of this eleventh clause, which provided that their contract should end if the licensing company (1) desired to operate the district directly, or (2) desired to merge it into some other district.

And they sought to substitute the provisions that they should go on unless the New York Company purchased, and that the New York Company should purchase unless they went on.

These two pretended provisions went hand in hand. They were a part of the same alleged bargain.

One could not exist without the other, and yet, in all these 208 exhibits in this case, this matter of the purchase is never even hinted at.

It deserves no name, even a name so immaterial as "The Ghost."

Now, your Honor, the Domestic Company had very early notice of this contract with the New Jersey Company.

On December 8th, 1882, the Metropolitan Company wrote them a letter practically saying what had been done, which I will read from page 175, as follows:

"NEW YORK, Dec. 8th, 1882.

"DOMESTIC TELEGRAPH AND TELEPHONE CO., Newark, N. J.

"*Gentlemen:*—In reply to yours of the 7th inst. asking for bills of telephone rentals for month of November, I would say that this Company has assigned to the New Jersey Telephone Company the license contract with you, dated August 6, 1879, and all our interest therein. This assignment was made October 2d last and all the telephones which you then had will be held by you directly of the New Jersey Tele-

"phone Company, and only indirectly of this Company and the American Bell Telephone Company.

"The rentals from October 2d last, will be payable to the New Jersey Telephone Company, which is to pay the same to us. Since October 2d you have received a few telephones of us, which, however, will come under the same arrangement, and be held by you under your license immediately of the New Jersey Telephone Company, of which you will obtain any further instruments which you may need. Rentals which you have paid us for telephones since October 2d, will be adjusted, and the accounts between us closed as of that date. The rentals of your telephones for November will be collected by us of the New Jersey Telephone Company.

"Yours respectfully,

"JOSEPH P. DAVIS,

"Vice Prest. Met. Tel. & Tel. Co."

Mr. Hubbell says (p. 176, l. 25): "We read this letter very carefully and observed that it did not attempt to touch upon the question of the renewal of their contract."

That was as accurate a statement as Mr. Hubbell made in his whole testimony.

He knew of the existence of the New Jersey Company; he knew of the territory it embraced; and he knew that if the contract with his Company had been assigned to the New Jersey Company, that *a merger of his Company's territory must inevitably follow at the end of its contract.*

He knew it so well that he made no response whatever to this letter and his Company went right on and dealt with the New Jersey instead of the Metropolitan, just as they had formerly gone on and dealt with the Metropolitan instead of the Bell of New York.

Why didn't he ask promptly for an inspection of this contract?

His modesty didn't prevent him from doing so later on, and the time to cry out in pain is when your toes are trodden on.

And if an inspection was refused him, why didn't he write to Mr. Davis that it was immaterial to him what sort of an arrangement had been made with the New Jersey Company; that his Company could not be bound by it; that they had made their renewal sure by the Gilsey House interview and the Western Union purchase, and decline to deal with a new company with the terms of whose contract they were in ignorance?

He merely contented himself by observing that the letter

didn't attempt to touch upon the question of the renewal of their contract.

If I make a lease to my tenant A of a boarding house for five years with a provision that he may acquire a new lease at the end of his term, provided I don't merge his establishment into that of my tenant B in the adjoining boarding house, and before the end of the term I write A that I have assigned his lease to B, he is very dull indeed if he don't comprehend that his days are numbered, and satisfy himself with the observation that I don't attempt to touch upon the question of a renewal of his lease.

Under the circumstances there would be no contemplated renewal to touch upon, and you can't touch upon nothing with any great degree of success.

And then Mr. Hubbell says (p. 176, l. 29): "*We carried out the objects of the letter* as far as we were able directly, but we always understood that the relation we occupied towards the Metropolitan Company was practically the same."

And as an evidence of the practical sameness of the relationship, he introduced right there—"although," as he says (p. 176, l. 37), "it is not consecutive," but presumably to make things connect—a letter written by the Metropolitan Company to the New York and New Jersey Company on April 26, 1884, which is found on page 177, and is as follows :

"NEW YORK, April 26, 1884.

"TO THE N. Y. & N. J. TELEPHONE Co.: Address 397 Fulton St.,  
"Brooklyn.

"We have forwarded on your order to your exchange, at  
"Newark, N. J., by express, the following, viz.:

"Five Blake transmitters, numbered 164,035—164,039.

"Five hand telephones, numbered, 146,355—146,359.

"If found correct please sign receipt and return the same  
"immediately to Metropolitan Telephone and Telegraph Com-  
"pany."

And that Mr. Hubbell says is an evidence of the practical sameness of relationship which formerly existed between the Domestic and Metropolitan.

Well, perhaps it is. But it is the sort of evidence of relationship a man would want introduced respecting some relatives which he didn't consider to be any great credit to him.

Now it appears that soon after the contract which I have referred to of October 2d, 1882, between the Metropolitan Tele-

phone and Telegraph Company and the New Jersey Telephone Company, the New Jersey Company and the Domestic Company entered into some negotiations looking to the immediate purchase of the plant of the Domestic Company and its retirement from the field.

And on February 16th, 1883, Joel C. Clark, the Treasurer of the New Jersey Co., wrote a letter to the Domestic on this subject, which I will read from page 1266.

“BROOKLYN, N. Y., February 16, 1883.

“In reply to yours of  
“GEO. W. HUBBELL, Pres’t of the DOMESTIC TEL. AND TEL.  
“Co., Newark, N. J.

“*Dear Sir:*—At the request of the president, I send you herewith a copy from the records of the meeting of the directors of the New Jersey Telephone Company, held this day: ‘The committee appointed to negotiate with the Domestic Telephone and Telegraph Company of Newark for the purchase of their contract and property, report that they had submitted to a committee of the directors of said company, an offer of \$100,000 (one hundred thousand dollars) in 6 per cent. bonds, and \$50,000 (fifty thousand dollars) in stock of the New Jersey Telephone Company and the Long Island Telephone Company for the entire business contract and property of the said Domestic Telephone and Telegraph Company, the delivery to be made as of February 1st, 1883, this offer to hold firm until Tuesday, 20th inst. Upon motion, the report of the committee was accepted, and the offer approved and ratified.

“JOEL C. CLARK, *Sec’y.*”

To this letter the Domestic Company made reply on February 21st, 1883. This reply is found on page 1269, and is printed as of date of May 21st, 1883, but it should be February 21st, 1883. I will read that also.

“NEWARK, N. J., Feb’y 21st, 1883.

“JOEL C. CLARK, Treasurer NEW JERSEY TELEPHONE COMPANY, Brooklyn, N. Y.

“*Dear Sir:*—Your letter of the 16th inst., addressed to George W. Hubbell, Esq., Pres’t, was read at the meeting of directors of this company, held 20th inst. I am instructed by the board to reply that the *amount* your company offer therein for the purchase of this company *was not thought sufficient*

"by them to place the matter before our stockholders for consideration, and your offer is hereby respectfully declined.

"Yours truly,

"F. T. FEAREY,  
"Sec'y Dom. Tel. and Tel. Co."

Now it will be observed that this reply did not criticise the character of the securities offered for this purchase. They were as good as the gold. We would all like to get hold of them. Simply "*the amount was not thought sufficient.*"

You can't blame them.

A business which, at its outset in less than two years—when extraordinary expenses were put upon it—could do what this business did and pay a stock dividend of \$50,000, equal to its capital stock, was worth a great deal more as it was developed, and this business had a year and a half yet to run. And besides that, they knew well enough that when their license expired and their territory reverted to the New York and New Jersey Company, their plant would *then* be worth every dollar it had cost them to the New York and New Jersey Company, and that during the remaining year and a half they could reap the heavy profits of this business with comparatively little expense.

Mr. Young says they will die in the last ditch and let their poles rot down and their wires corrode—or words to that effect—before the New York and New Jersey Company can have them; but your Honor will know that this is more sentiment than reality.

Men rarely die in the last ditch, and I rather think that this Domestic corporation, when they find that the Gilsey House scheme added no luster to their cause, will be willing to accept cash value for their plant.

Now, when the New Jersey Telephone Company was organized, there was also organized the Long Island Telephone Company to operate on Long Island, the counties of Kings, Queens, and Suffolk.

The Metropolitan Telephone and Telegraph Company made a contract and license with it in precisely the same terms it had made with the New Jersey Company, and in the summer of 1883, these two companies were united in marriage under the name of "The New York and New Jersey Telephone Company," one of the defendants to this suit.

On January 29th, 1884, this united company made a report to its stockholders setting forth (among other valuable informa-



tion it contained) that on August 31st, 1884, the telephone business of this city of Newark would revert to them.

It would really seem that from what has been seen in this case that they were amply justified in making such a report.

It was no contrivance.

It was made as open and free as the day.

No pains were taken to keep it from circulation—in fact, no doubt the New York & New Jersey Co. desired that it should have all the publicity possible.

That is what reports are usually issued for.

One copy fell into the hands of the Domestic Company.

They might have had two if they had wanted them.

After this business the Domestic Company met on March 28, 1884.

Their minute shows (p. 464, l. 6) that “The Executive Committee presented a letter which they thought would be advisable to send to the Metropolitan Telephone and Telegraph Company asking for a renewal of our Telephone license, and that it was thought best to have the approval of Mr. Harrison and Jabez Fearey before taking action, and a committee of Weston, Runyon, and Mr. F. T. Fearey was appointed to wait upon Harrison and get his views.”

The very meek way in which these Domestic gentlemen resolved to *ask*, and not demand, what was bargained to them, is quite remarkable.

And it is also quite remarkable that they omitted the ghost—the purchase at the end of their term—from their deliberations.

If their story be true, that was as much a part of the Gilsey House bargain as the other, but it seems to have been forgotten.

It is also quite remarkable how they stuck to John D. Harrison.

He had been sick (p. 456, l. 7), and so they send a committee to his house to get his views.

One would think from a careful perusal of this case that the Domestic Company spent most of its time in getting Mr. Harrison's views, and that his views would be about exhausted by this time; but they were now approaching a period of *dissolving views*, and perhaps they wanted to get his impressions of such a scene.

Well, they got together one Sunday afternoon (p. 455, l. 23)—this committee—and went up on High street, very nearly under

the nose of the Court of Chancery, in which they were itching to figure, and called Mr. Harrison off his sick cot and took his views (p. 519-20).

Let us look into this interview a little.

Your Honor will bear in mind that they were now getting ready for litigation, and were proceeding with caution and care.

Mr. Weston says Mr. Harrison told them about the Gilsey House bargain, and informed them that a contract in accordance with the understanding between the parties at the Gilsey House had been drawn (p. 457, l. 9).

He said further (p. 447, l. 35), that Mr. Harrison said "*there had been some question of doubt with regard to our right of renewal under the old contract*, and that there was a difference of opinion between counsel in Boston and New York who had examined the old contract."

Mr. Runyon says Mr. Harrison stated at this interview (p. 514, l. 22), "that they had a perfect right to the renewal of their contract and that there was no doubt but what the contract would be renewed upon just and fair terms. *That is the substance of the conversation.*"

Mr. Young then asked him if he had anything further to say about it, and he said (p. 514, l. 38), "he didn't know of anything further than that."

A little further on Mr. Young asked him (p. 515, l. 28).

"Q. State if you remember whether at that interview any reference was made by Harrison to the Gilsey House arrangement or interview?"

"A. He did.

"Q. What did he say about it?"

"A. He talked—(a pause)—that the conversation at the Gilsey House—that that would be carried out by the Metropolitan Company undoubtedly."

That was Mr. Runyon's location of Mr. Harrison to the Gilsey House, at that interview.

Mr. Frederick T. Fearey, the third member of this committee, having established something of a reputation for hesitancy in going to extremes in this case, was not examined respecting this wonderful interview—so we are left in somewhat delightful uncertainty as to the outcome of it.

It was a mistake not to have put Mr. Hubbell on the committee.

This committee reported to a meeting of the Company held on April 4, 1884.

Mr. Weston says (p. 462) they undoubtedly reported a great deal more fully than he gave his testimony.

Now, if the testimony of Messrs. Weston and Runyon is true, this Domestic Company had not forgotten about the Gilsey House interview when they were paving the way for litigation, and they had no excuse for omitting from their original bill, and the allegation that they probably failed to recall it particularly was a fraud and imposition on this Court when the application for leave to amend was made.

And if Mr. Weston's story is true that Mr. Harrison told them at this interview in 1884 that questions of doubt had arisen between counsel respecting the right of renewal under their contract, they had their early warning of the character of the defense in this suit, and their claim that they were misled by merger rests upon no substantial foundation whatever.

I say this committee reported this Sunday interview with Mr. Harrison to a meeting of the Company held on April 4.

We offered the minute of this meeting in evidence, and just here I desire to call your Honor's attention to the significant fact that out of the thirty-seven minutes of the Domestic Company bearing directly upon this subject, *the complainants introduced only six of them*; and without any knowledge as to their contents, except the certainty that if they recorded the truth, they could not damage us—and John D. Harrison was present at nearly all their meetings, and we knew they could not record a lie if he could prevent it—we marched boldly into their camp, and in the face of much protestation and objection on their part *we offered thirty-one of their own minutes* in evidence in this case!

This committee did not report "progress" at this meeting of April 4.

Their minute records a report of the truth—as it then existed—fully and explicitly, needing neither embellishment nor explanation.

The report is found on page 468, and is as follows:

"Mr. Runyon reported that the Committee waited on Mr. Harrison, and that he approved of the letter and thought it advisable to have it forwarded at once. The President and Secretary were instructed to prepare the letter as it now read and authorized to sign and deliver same to Jos. P. Davis, Vice President of the Met. Tel. and Tel. Co., N. Y., by messenger."

The minute is silent on the subject of the consultation with Mr. Jabez Fearey—so we shall never know whether he approved of it or not.

The next day the letter was copied off and signed by Mr. Hubbell and Frederick Fearey, and sent off.

I will read it. Page 193.

“NEWARK, N. J., April 5, 1884.

“THE BELL TELEPHONE COMPANY, AND THE METROPOLITAN  
“TELEPHONE & TELEGRAPH COMPANY, of New York.

“*Gentlemen:*—The attention of this Company has been called  
“to statements contained in the January, 1884, annual report  
“of the New York and New Jersey Telephone Company, which  
“are as follows: ‘During the coming year (August 31st, 1884)  
“‘the telephonic business of the city of Newark reverts to this  
“‘Company by the expiration of the contract now held by the  
“‘Domestic Telegraph & Telephone Company. By the terms of  
“‘the contract this Company has the option to purchase the  
“‘plant of the Domestic Telegraph and Telephone Company at  
“‘a fair valuation (to be fixed by arbitration if not otherwise  
“‘agreed upon); also note the telephonic exchange of the city of  
“‘Newark, N. J., is now operated by the Domestic Telegraph  
“‘and Telephone Company of that city under a license contract  
“‘which expired on August 31st of this year, at which time the  
“‘territory reverts to this Company.’ As the contracts between  
“this Company and the Bell Telephone Company of New York,  
“under which this Company’s telephone business is operated,  
“expressly provide for a renewal of the telephone license to this  
“Company, which renewal this Company does now *and has al-*  
“*ways insisted upon*, these statements are untrue, and in direct  
“denial of the *terms of the said contracts*, and of the rights  
“enjoyed by this Company thereunder.

“The Domestic Telegraph and Telephone Co. therefore calls  
“your attention to these published statements, and requests you  
“to state whether these statements were made with your  
“knowledge and by your authority.

“The Domestic Telegraph and Telephone Co. *hereby makes*  
“*application for a renewal of its license under the terms of its*  
“*contract*, and is loath to credit any unofficial report or hearsay  
“rumor that there will be any inclination on your part to deny  
“or attempt to withhold its rights.

“This Company would respectfully request the favor of an  
“early reply.

“Yours,

“GEO. W. HUBBELL, *President*.

“F. T. FEAREY, *Secretary*.

“*The Domestic Telegraph & Telephone Company of Newark. H.*”

That letter was written the very day after Mr. Weston's committee reported to the Domestic—more fully than he testifies—the interview with Mr. Harrison wherein he told them of the Gilsey House bargain, and yet they place their application squarely and in terms upon their contracts, and ignore entirely the variation in them that would have been wrought by the Gilsey House bargain—if such bargain had ever been made.

And your Honor will bear in mind that the Gilsey House bargain—even if it were true—involved an alternative to the renewal of the license.

We did not hear a single thing of this alternative in the testimony in this case, but it was just as much a part of the bargain as the renewal, and occupied just as prominent a position in the amendments imposed upon this case, and if there was a shadow of truth in any of the allegations contained in the amendment, would not the alternative reserved to the licensor company—the purchase at the end of the term—have found expression in this letter?

Mr. Davis, the Vice President of the Metropolitan Company, to whom this letter was delivered, answered it on April 6, 1884. This answer is found on page 194.

“NEW YORK, April 6, 1884.

“Messrs. GEO. W. HUBBELL, Pres't, and F. T. FEAREY, Secretary of the DOMESTIC TELEPHONE AND TELEGRAPH CO. of Newark.

“Gents:—Your letter of the 5th instant reached me yesterday by private hand.

“*Whatever the contract rights of your Company are, you will, of course, be able to assert and enforce them.*

“I have no information whatever, except such as your letter conveys, with regard to the circular which you refer to as having been issued by the New York and New Jersey Telephone Company. It is not necessary for me in this letter to attempt to put any construction upon our contract with that company.

“Yours truly,

“JOSEPH P. DAVIS,

“*Vice President.*”

Mr. Davis's letter, it will be seen, followed directly in the line of the communication it sought to answer, *and directly in the line of every exhibit in this case*, and placed the Domestic rights upon their contracts.

It remained, however, for the Domestic Company to make the matter minute and explicit.

They met again on April 22, 1884, and their minute, as usual, offered in evidence by us, shows (p. 466, l. 30):

“Letter from Joseph P. Davis, Vice President of the Metropolitan Telephone and Telegraph Company, in reply to the letter of recent date, asking for the renewal of our telephone license, was read and discussed. The President was authorized to prepare a formal application *in accordance with the reading of our contract*, and submit same at meeting of directors to be held at this office on Tuesday, the 29th inst., 5 P. M.”

Is there any longer a reason for wonder why the Domestic Company, or its counsel, did not offer these minutes in evidence?

Only eighteen days before, Mr. Weston's committee—that is, according to his testimony, *but not according to the minutes*—had reported an interview with John D. Harrison, at which this Gilsey House verbal bargain had been discussed, and now they lose sight of it already, and authorize their president to prepare a formal application, which should practically be a step into litigation—“*in accordance with the reading of our contract*”!

What did their president do under this authorization?

However sharply I may have been forced to criticise him in this case, he must still be credited with being a most thoughtful and sagacious lawyer. With the Weston and Fearey report of the Harrison interview respecting the Gilsey House bargain, and with the Weston report and warning from Harrison that there was a disagreement among counsel as to the validity of the covenant of renewal contained in the eleventh paragraph of their contract, and with the necessity of supplementing its weakness by the Gilsey House bargain; with no hint up to this time that the defense would be merger;—with all these considerations fresh in his mind, *after a week of thoughtful consideration*, he sits down and deliberately writes this letter, found on page 195:

“NEWARK, N. J., April 29, 1884.

“JOS. P. DAVIS, ESQ., Vice President of the METROPOLITAN  
“TELEPHONE & TELEGRAPH COMPANY, New York.

“*Dear Sir*:—Your favor of the 8th instant received, and we  
“thank you for the information contained.

"In accordance with the eleventh paragraph of our contract, we, the Domestic Telephone and Telegraph Company, hereby make application for a new telephone license for the territory now occupied by us; or, a renewal of the existing license, to take effect from and after Sept. 1, 1884.

"We ask you to lay this application before your Board of Directors, and await a reply.

"GEO. W. HUBBELL,  
"President.

"F. T. FEAREY,  
"Secretary of The Domestic Telephone and Telegraph Com-  
pany, Newark, N. J."

Now, when these letters of April 5th and 29th were written by the Domestic Company, they had in view this litigation, and not only that, *they carefully prepared for it*. They sent their committee to see John D. Harrison as to the form of the letters to be sent, and they discussed the form in the meetings of their directors.

If their story is true, they had not all forgotten about the Gilsey House interview, for Mr. Weston says that on the occasion of this visit to Mr. Harrison on Sunday, Mr. Harrison went over to him the promises made at that interview, so that they were not ignorant of the bargain upon which their right to renewal rested.

If their story is true, the conditions of the entire 11th clause were swept away by the Gilsey House interview, as was also the clause of optional purchase.

The conditions were now simply these:

If the New York Company *didn't* desire to operate this district directly, the Domestic Company was to continue right on, upon the terms of the contract of August 6, 1879, or upon better terms, if better terms in rentals were made to other companies.

Or, if the New York Company *did* desire to operate the district, they were to buy the Domestic Company out (not have the option of buying them out) and the price paid for the Western Union plant was to form the basis.

It was a total obliteration of the 11th clause in the contract—not a vestige of it remained—and a brand new condition substituted in its place. As your Honor must see by comparing it with the amendments to the bill.

And yet, with a tremendous litigation before them; when, if ever, they were alert to their rights, when, if ever, they would exercise care and caution in what they said and wrote, they sit

down, consult together, and no doubt take counsel of a most ingenious mind, and write, "*In accordance with the eleventh paragraph of our contract*, we, the Domestic Telegraph and Telephone Company, hereby make application *for a new telephone license* for the territory now occupied by us, or a renewal of the existing license, to take effect from and after September 1, 1884."

When they penned that letter, the thought of a bargain or a contract at the Gilsey House or anywhere else, to vary the terms of their contract of Aug. 6, 1879, had never entered their mind.

They knew when they penned that letter, that the 11th clause of their contract stood precisely as it had always stood, and that no attempt or thought to vary it had ever been indulged.

They recognized its force and effect at once, distinctly and in terms.

Their application was alternative *for a new telephone license, or for a renewal.*

If their Gilsey House story is true, the thought of a new license was thus done away with forever.

If their story is true, they were, to use their own language, to "continue right on under their present contract for another five years."

When they penned that letter they had no other thought but that the Metropolitan Company might avail itself of the right reserved in that 11th clause, to make *a new telephone license upon such terms as they might fix and determine.*

On June 4, 1884, Mr. Davis answered this letter of April 29, as follows (p. 195):

"NEW YORK, June 4, 1884.

"Messrs. GEO. W. HUBBELL, President, and F. T. FEAREY,

"Secretary of the DOMESTIC TELEGRAPH AND TELEPHONE  
"COMPANY, Newark, New Jersey.

"*Gentlemen:*—I have received your letter of April 29, 1884, making application for a new telephone license, or a renewal of the existing license, to take effect from and after September 1, 1884.

"The Metropolitan Telephone and Telegraph Company does not assent to your proposition, but has entered into arrangements with the New York and New Jersey Telephone Company which make it proper to refer you in this matter to the latter. The office of the New York and New Jersey Telephone Company is at 397 Fulton Street, Brooklyn, N. Y.

"Very respectfully,

"JOS. P. DAVIS, *Vice President.*"



On July 17, 1884, the Domestic Company wrote the following letter to the Metropolitan, asking for an inspection of their contract with the New York and New Jersey Company.

This letter is found on page 196.

“NEWARK, N. J., July 17, 1884.

“THE METROPOLITAN TELEPHONE AND TELEGRAPH COMPANY,  
“New York.

“*Gentlemen*.—The Domestic Telegraph and Telephone Company of Newark, hereby requests an inspection and copy of  
“the subsisting agreement or agreements between your Company and the New York and New Jersey Telephone Company  
“relating to the territory of Newark, East Newark and Kearney,  
“if any such agreements exist.

“An early reply stating when and where the agreement or agreements may be seen and copied is requested.

“GEORGE W. HUBBELL, *President*.

“F. T. FEAREY, *Secretary*.”

On July 23, 1884, the Metropolitan Company answered this demand, but very properly refused to accede to it.

This answer is found on page 196 and is as follows:

“NEW YORK, July 23, 1884.

“G. W. HUBBELL, Esq., President and F. T. FEAREY, Esq.,  
“Secretary of the DOMESTIC TELEGRAPH AND TELEPHONE  
“COMPANY, Newark, N. J.

“*Gentlemen*.—In reply to yours of the 17th instant, I would  
“say that as arrangements have been made for merging the  
“Newark district with surrounding territory, a case contemplated by article 11, of your contract, the details of our contract with the New York and New Jersey Company cannot  
“concern you.

“We must therefore decline your request.

“Respectfully yours,

“JOS. P. DAVIS, *Vice President*.”

Immediately upon the receipt of this refusal the Domestic Company made a similar demand upon the New York and New Jersey Company by letter found on page 197 as follows:

“NEWARK, N. J., July 23, 1884.

“THE NEW YORK AND NEW JERSEY TELEPHONE COMPANY,  
Brooklyn, N. Y.

“*Gentlemen*.—The Domestic Telegraph and Telephone Com-

“pany of Newark hereby requests an inspection and copy of  
 “the subsisting agreement or agreements between your Com-  
 “pany and the Metropolitan Telephone and Telegraph Company  
 “relating to the territory of Newark, East Newark and  
 “Kearney, if any such agreements exist.

“An early reply stating when and where the agreement  
 “or agreements may be seen and copied is requested.

“The Domestic Telegraph and Telephone Co.

“By GEO. W. HUBBELL, *President*.

“F. T. FEAREY, *Secretary*.”

The New York and New Jersey Company answered this demand by letter of July 31, 1884, found on page 197, as follows :

“BROOKLYN, N. Y., July 31, 1884.

“THE DOMESTIC TELEGRAPH AND TELEPHONE CO., Newark, N. J.

“GEO. W. HUBBELL, *President*.

“*Dear Sir:*—Replying to your favor of 23d inst. requesting  
 “an inspection and copy of the subsisting agreement or agree-  
 “ments between this Company and the Metropolitan Telephone  
 “and Telegraph Company relating to the territory of Newark,  
 “East Newark and Kearney, if any such agreement exists,’ etc.,  
 “I would say that arrangements have been made for merging  
 “the above mentioned district (now operated by your Company)  
 “with the surrounding territory.

“The terms of any agreement we may have with the Metro-  
 “politan Company in reference to the matter can have no  
 “special interest for you, and we must, therefore, decline your  
 “request for ‘an inspection and copy’ of any such agreements.

“We take this opportunity of notifying the Domestic Tele-  
 “phone and Telegraph Company that this company does not de-  
 “sire to take the plant and telephonic property of said Domestic  
 “Company at a price to be fixed by arbitrators, as it has the op-  
 “tion to do under the contract. If, however, it is the desire of the  
 “Domestic Company to sell its plant at a price to be agreed upon  
 “between the two companies, the officers of this company will  
 “be ready to meet you at any time to discuss the value of the  
 “same. It should be understood, however, that if any nego-  
 “tiations of this character are to be opened, it must be done at  
 “once before other arrangements are made.

“Respectfully yours,

“The New York and New Jersey Telephone Company.

“By CHAS. F. CUTLER, *President*.”

These complainants now come into court and say they were misled from the now main issue in this case, by these letters from Messrs. Davis and Cutler saying arrangements had been made for merging the Newark district into surrounding territory, into supposing that "merger" was going to be our defense.

Where did this misleading begin—if they were misled?

When the Domestic Company met on April 22, 1884, only a few days after the report of the Weston-Runyon & Fearey committee was made, in which was detailed the interview with Mr. Harrison at which this Gilsey House bargain was discussed—and directed their President "to prepare a formal application *in accordance with the reading of our contract*" and not in accordance with the Gilsey House bargain, they took a step which was false and misleading, if there is a shadow of truth in their story.

When George W. Hubbell wrote them on April 29, 1884, that "in accordance with the 11th paragraph of our contract" they applied for a new license—if his story be true—he wrote them what he knew was misleading and false, for their right to a new license or a renewal rested upon the Gilsey House bargain and not upon the eleventh clause of their contract.

They come before the Court in a very poor plight to claim that they were misled—poor things!

If there is a shadow of truth in their story they could not have been misled, for your Honor cannot read the amendments to this bill and find a shred of the option of merger left.

By the Gilsey House bargain—if the Domestic story be true—the option of merger was swept away with the rest of the eleventh clause of the contract.

And yet they come in here and make a specious plea and excuse for not incorporating this Gilsey House business in the original bill, by declaring they were misled, and supposed our defense was going to be merger.

If they were misled, they were misled by a statement of the simple truth; and their own statement of the simple truth that all their claim for a new telephone license, or a renewal of their existing license, rested upon the eleventh clause of their contract was the basis of their misleading, and they were indeed in a sorry plight when a statement of the truth was so novel as to be misleading.

When Mr. Davis wrote them on July 23, that arrangements had been made for merging their district with the surrounding territory, and placed his claim for the statement upon the very

same eleventh clause upon which they had based their application for a new license or a renewal, the Domestic Company knew—if their story is true—that this option of merger had been canceled by the Gilsey House bargain, and yet they opened not their mouth.

When Mr. Cutler wrote them on July 31, that his “Company” “did not desire to take the plant and telephonic property of the Domestic Company at a price to be fixed by arbitration, *as it has the option to do under the contract.*” the Domestic Company knew—if their story is true—that this option of purchase under the contract, had been canceled by the Gilsey House bargain, and yet they opened not their mouth.

And then Mr. Young comes in with his argument and proclaims that we were bound to inquire of the Domestic Company as to the terms upon which they held this district, after they had declared specifically and in writing that they stood upon the eleventh clause of this contract, and nothing else.

A few remarks and I have done.

A vigorous attack was made in this case upon John D. Harrison, and so anxious were our Domestic brethren for this onslaught, that they could not wait until Mr. Harrison had told his story, and thus ascertain from his own lips his version of the matters in controversy here.

With one voice they began to cry out against him, because they knew his honesty would preclude all possibility of his story according with theirs.

And so they cried out with one voice against him as they had been wont to vie with each other as to which should first second his business-like propositions at the meetings of their Company.

Can any one imagine in the light of the developments in this case—a more humiliating spectacle than John D. Harrison would now present, with every document in this case against him, if he had chosen to follow in the wake of Mr. Hubbell?

Such testimony had no relevancy to, or bearing upon, or standing or business in this case.

Suppose it were true that he made the representations and promises charged against him by these gentlemen!

He was during all this time a director in their own Company, and it is very old law that no man can serve two masters, and whatever declarations or statements or promises he may have made to these gentlemen in the meetings of the Domestic Company, or elsewhere, must be held to be made in his capacity as a director of that company.

But suppose he had not been a director in their Company,

his promises and statements could have no force or effect against these defendants, unless his authority from them is shown, and no attempt has been made to show that in this case.

The testimony of these gentlemen who have volunteered to attack him, is as full of contradictions, and improbable and impossible statements as testimony can be.

And if properly analyzed would make as sorry an exhibit as Mr. Hubbell's loose testimony respecting the handwriting of his original contract of August 6, 1879:

As sorry an exhibit as the attempt to change the reading and phraseology of the 11th clause of their contract to make it give color to their case:

As sorry an exhibit as their asking this Court to make for them a contract which they swore they did not urge nor desire; did not agree to, and which their Company rejected the idea of receiving:

As sorry an exhibit as their attempt to connect the President of the National Bell Telephone Company with the authorship of a circular which they were compelled to admit was copied in New York by a man never produced in this case:

As sorry an exhibit as their indecent haste to offer in evidence the private, personal letter of Theo. N. Vail to "My dear F.":

As sorry an exhibit as their attempted assignment of Mr. Harrison to the part of sneak and traitor at the Gilsey House performance:

As sorry an exhibit as their appointing him on their committee, accepting him to act in concert with them, and then having the brazen effrontery to swear that he was there representing the Bell Telephone Company of New York:

As sorry an exhibit as the appointment of their committee to meet General Manager Vail of the National Bell Company, and then by a smothering of minutes and correspondence make it appear to be a committee to meet a committee of the Bell of New York:

As sorry an exhibit as their true and cry about a *Western Union* isolated exchange in order to divert attention from a *Domestic* isolated exchange:

As sorry an exhibit as the effort made to induce the Court to believe that hundreds of thousands of dollars worth of business were bartered at the Gilsey House, between corporations accustomed to act with the most scrupulous care, without the scratch of a pen:

As sorry an exhibit as the declaration that the continuance of the Domestic contract was secured at the Gilsey House, uttered in the same breath with the declaration that *it had always been* agreed and conceded, and was one of the agreed facts *upon which the interview took place*, that the Domestic Company had a right of renewal:

As sorry an exhibit as the ineffectual attempt to get Mr. Fearey to corroborate Mr. Hubbell's statement that no contract was spoken of at the Gilsey House which should evidence the *assent of the transfer* of the Domestic contract to the new company about to be formed:

As sorry an exhibit as the testimony of Mr. Jabez Fearey, who could detail the essentials of the alleged Gilsey House bargain of five and one-half years ago, but whose mind was an utter blank respecting the contents and solemnity of his affidavit made but a few weeks before:

As sorry an exhibit as the smothering away of Mr. Vail's important letters of April 20 and 23, immediately following the Gilsey House interview, which the Domestic Company had in possession:

As sorry an exhibit as the smothering away of the minute of the very meeting at which their committee reported, as directed, because it showed in terms with whom they went to confer, and because it showed the transaction to be a moneyed transaction without any conditions whatever:

As sorry an exhibit as their pretense that the important (pretended) considerations at the Gilsey House were embodied in the word "progress" of which their report consisted:

As sorry an exhibit as their attempt to correct their damning minute in the face of letters by the dozen on either side of it bearing testimony to its accuracy:

As sorry an exhibit as their first letter, written only eight days after the Gilsey House interview, to the National Bell Telephone Company, asking for "price and conditions of sale" in the face of their sworn statements that the conditions were filed and agreed upon at the Gilsey House:

As sorry an exhibit as their constant effort to blind the eyes of the Court to the fact that the Metropolitan Company was the successor of the Western Union, as well as of the New York Bell:

As sorry an exhibit as the claim in their amended bill that the reduction of rentals grew out of the Gilsey House interview, in the face of their own letters which show that they claimed it from the time their contract of August 6, 1879, was executed:

As sorry an exhibit as their attempt to construe negotiations for a license under the Western Union patents (which they sneered at, but upon which their minutes and their memorandum were their enemies) embracing private lines, reductions in rentals, and arbitration of disputed items of cost, into a new contract for ten years:

As sorry an exhibit as Mr. Hubbell's deliberate distortion of the expression "in *assent* of transfer" contained in the minute of his Company of June 15, 1880 (and which expression runs through all the testimony, *Fred. T. Fearey's* included) into "in *event* of transfer," in order to support his own lonely testimony, and for the purpose of giving the expression a different meaning:

As sorry an exhibit as his confession in his running comments on his minute of June 15, 1880, that "the whole thing had gone "along up to that time without giving us any definite information of what we were buying, or of what we were doing" in the face of his positive testimony of the Gilsey House bargain:

As sorry an exhibit as the treat to "verbal conversations" with Messrs. Vail and Davis, in lieu of a bargain at the Gilsey House or anywhere else, spread upon this minute and incorporated in the letter of their *blank President* to Mr. Vail of the same date:

As sorry an exhibit as their attempt to make the Court believe that the New York Company would give them this five years extension, for nothing, if by some means they could wipe out the Western Union cost:

As sorry an exhibit as Mr. Hubbell's statement that Mr. Harrison came to his Company in the early part of 1880, in his capacity as a director of the Metropolitan Company, and told them they could have a ten year contract by asking for it, in face of the fact that the Metropolitan Company had no existence in the early part of 1880:

As sorry an exhibit as his three separate and distinct stories respecting the time when Mr. Harrison so came:

As sorry an exhibit as his statement of applications made (in pursuance of Mr. Harrison's information), for such new ten year contract to Mr. Joseph P. Davis personally, and by undiscovered letter; and his subsequent humiliating confession that he never made any personal application before July 16, 1880, and that the undiscovered letter was that of July 14, 1880, which had no more relation to a ten year contract than to a tunnel under the moon:

As sorry an exhibit as his originally smothering out of this

case this letter of July 14, and offering in evidence the answer to it, so that, by a play of the imagination, color to a ten year contract theory might be given:

As sorry an exhibit as his manner of testifying to the endorsement put upon the memorandum of the items of private lines, reductions in rentals and arbitration, *to go into the Metropolitan license*, which testimony was given so adroitly as to deceive his own counsel:

As sorry an exhibit as their offering in evidence their *press copy* of a letter of October 16, 1880, to Mr. Vail (the only one of the whole correspondence that even remotely referred to the Gilsey House interview, and that upon an immaterial point) to give some weight to that interview; and then deliberately smothering away the *original answer* to it which they had in their possession; and that too only a few moments after Mr. Hubbell had offered in evidence two unimportant letters, solely for the purpose as he avowed, "to make things connect," but really to create an impression that he was frank and fair:

As sorry an exhibit as the letter of January 11, 1881, which they swore at one time was the beginning of the negotiations for a new ten year contract; and at another time was merely a request that a clause of renewal might be inserted in the ten year contract which had then been agreed upon, and which they then knew they were going to get:

As sorry an exhibit as when, at the next meeting of their Company on January 27, 1881, they discussed the changes of getting a contract for ten years instead of five:

As sorry an exhibit as the pretended visit which Messrs. Hubbell and Fearey made to Mr. Gage, the secretary of the Metropolitan Company, when they found him *alone*, and when, as they allege, he produced the ten year contract, and which, according to story No. 1, he exhibited to them; according to story No. 2, he would not let them read through; and, according to story No. 3, he would not even let them take in their hands; and about which, with no Gage to contradict them, Messrs. Hubbell and Fearey effectually contradicted each other:

As sorry an exhibit as the two stories Mr. Hubbell told why the ten year contract was never in fact executed: (1) because his Company "rejected the idea of receiving it"; and (2) because of a rather violent altercation between "*a man by the name of Grinstead*, and *our Superintendent, Mr. Jabez Fearey*,"—both of which stories Mr. Young rejected the idea of receiving:

As sorry an exhibit as Mr. Hubbell detailing in his testimony



